

- ☐ Expedite
☐ No hearing set
☐ Hearing is set

Date:

Time:

Judge/Calendar:

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

FREEDOM FOUNDATION, a Washington
nonprofit organization,

Petitioner,

v.

WASHINGTON STATE PUBLIC DISCLOSURE
COMMISSION, a State of Washington
government agency, and AMALGAMATED
TRANSIT UNION LEGISLATIVE COUNCIL
OF WASHINGTON STATE, an IRS 527 political
organization,

Respondents.

No.

**PETITION FOR REVIEW PURSUANT
TO THE ADMINISTRATIVE
PROCEDURES ACT, *Chapter 34.05*
RCW**

I. INTRODUCTION

1. Pursuant to the Administrative Procedures Act (“APA”), the Freedom Foundation (“Foundation”) petitions for review of the dismissal, by staff of the Washington State Public Disclosure Commission (“PDC”), of its complaint alleging violations of the Fair Campaign Practices Act (“FCPA”) by the Amalgamated Transit Union Legislative Council of Washington

1 State (“ATULC”).

2 2. In brief, the ATULC is a non-disclosing political committee which contributed over
3 \$110,000 in the years 2014-18 to political candidates and committees (at least twenty percent
4 (20%) of its annual expenditures, during this period, and as much as 45% during election years)
5 and falsely stated under penalty of perjury to the Internal Revenue Service (IRS) that it discloses
6 these political expenditures in Washington State, thereby avoiding IRS disclosure requirements.

7 3. PDC staff ignored *its own records* showing that ATULC actually made far more political
8 expenditures than its lawyer claimed, and that, for at least one whole year, such expenditures were
9 necessarily and mathematically one of its primary purposes. Further, PDC staff ignored the
10 explicitly political description of its purpose ATULC provided to the IRS when claiming tax status
11 as a “political organization,” and publicly repeated elsewhere, in favor of the nonpolitical
12 description of its purpose provided by ATULC’s attorney. Finally, the PDC also accepted
13 ATULC’s incorrect argument that “intermediate bodies”¹ such as itself cannot be a political
14 committee simply because they do not receive dues from individual union members.

15 4. ATULC violated the Fair Campaign Practices Act (“FCPA”) by failing to register as a
16 political committee and failing to disclose contributions received and expenditures made.

17 5. Consequently, the PDC erred when its staff dismissed the Foundation’s complaint insofar
18 as it erroneously applied the law to require intermediate bodies like ATULC to receive dues from
19 unions members, and acted arbitrarily and capriciously to make “findings” without, and contrary
20 to, substantial evidentiary support in the record – and indeed, which contradicted the evidence
21 available in the PDC’s own records.

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24 ¹ Affiliates of a national labor union that exist between the national union headquarters its local affiliates that actually represent its members.

II. PARTIES

6. Petitioner, the FREEDOM FOUNDATION (“Petitioner” or the “Foundation”), is a Washington nonprofit organization, which filed the Complaint at issue.

7. Respondent, the WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION (“PDC” or the “Commission”), is a government agency of the State of Washington, organized pursuant to RCW 42.17A.100, *et seq.*

8. Respondent, ATULC, has self-determined to be a “political organization” under 26 USC § 527, and has filed an IRS Form 8871, to claim the tax benefits accordant to that designation under federal law. A true and correct copy of ATULC’s Form 8871, dated May 29, 2007, is attached hereto as **Exhibit A**.

9. ATULC is an intermediate body (internally called a “joint conference board”) of local chapters of the Amalgamated Transit Union (“ATU”), under the Constitution and General Laws of the ATU. As a joint conference board, ATULC has no full-time staff, nor does it claim to have any members.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to RCW 34.05.510.

11. Venue is proper under the APA, pursuant to RCW 34.05.514(1).

12. Venue is proper in this Court pursuant to RCW 4.12.020, because some part of the cause of action arose in Thurston County.

IV. STATEMENT OF FACTS

13. The Foundation notified the PDC of the ATULC’s violations of the FCPA in great detail, by way of an administrative complaint dated December 11, 2018. The complaint was assigned Case No. 43940. A true and correct copy of the Freedom Foundation’s complaint, dated December

11, 2018 (without Appendix documents), is attached hereto as **Exhibit B**.

14. Subsequently, on April 15, 2019, the Foundation supplemented its initial Complaint to the PDC, with additional information concerning ATULC's required disclosures under the Labor Management Reporting and Disclosure Act for the year 2018. A true and correct copy of the supplement to the Foundation's Complaint, dated April 15, 2019 (without Appendix documents), is attached hereto as **Exhibit C**.

15. The violations described in the Foundation's Complaint spanned multiple years, as ATULC has met the definition of a "political committee" either continuously or intermittently since at least 2014 but has never registered as a "political committee" under the FCPA.

Political purpose

16. As set forth in its IRS Form 8871 claiming status as a political organization under 26 U.S.C. §527, ATULC's purpose is "[t]o promote legislation and candidates supportive for Amalgamated Transit Union member[s] in the State of Washington." See **Ex. A** (emphasis added). This is in fact the ATULC's sole purpose.

17. A "political organization" is "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. §527(e)(1). An "exempt function" includes the function of influencing or attempting to influence the election of any individual to any federal, state, or local public office. 26 U.S.C. §527(e)(2).

18. Political organizations must disclose on IRS Forms 8872 the amount, date, and purpose of expenditures exceeding \$500 annually and the name and address of all contributors exceeding \$200 annually. 26 U.S.C. §527(j)(3).

1 19. However, a political organization need not disclose its contributions or expenditures to the
2 IRS if it is a “qualified State or local political organization.” 26 U.S.C. §527(j)(5)(c).

3 20. To be a “qualified State or local political organization” requires, among other things, that
4 the organization be “subject to State law that requires the organization to report (and it so reports)”
5 information regarding each separate expenditure from and contribution to the organization, and
6 the person who makes or receives it. 26 U.S.C. §527(e)(5)(A).

7 21. ATULC, on its 2007 Form 8871, specifically checked the box claiming exemption from
8 disclosing its contributions and expenditures to the IRS on Forms 8872 as a qualified State or local
9 political organization filing reports in Washington. *See Ex. A.* ATULC checked that box knowing
10 it was *not* filing reports in Washington, and did not intend to.

11 22. ATULC does not file Forms 8872 with the IRS under 26 U.S.C. §527(j) and, contrary to
12 its representation, does not file reports with the State of Washington, either.

13 23. This is a serious violation of federal law. But if the IRS ever wondered whether ATULC
14 should be filing Forms 8872, it would see the “reason” they do not on the Form 8871, never expect
15 such a direct lie, and presumably would not discover the deception without further investigation
16 outside its own resources.

17 24. ATULC, notwithstanding these specific facts brought to its attention, has neither filed an
18 amended Form 8871 nor begun filing reports with the IRS on Form 8872.

19 25. ATULC’s website also describes its purposes in overtly political terms. For instance, the
20 website states that its purposes are:

- 21 a. “To protect the rights of the members of the Amalgamated Transit Union at the
22 level of political activity that can be generated by the combined efforts of this
23 Legislative Council composed of the Local Unions embodied within the State of
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Washington.”

- b. “To promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State.”
- c. “To cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered.”
- d. “To encourage our memberships to be politically alert on matters that affect their livelihood, and create a more favorable public sentiment towards the Transportation Industry.” (emphasis added).

See http://www.atulcwa.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=510298.

Political expenditures

26. Because it has no paid staff, ATULC is run by a board of unpaid volunteers, comprised of union officials from ATU locals in the State of Washington. As a result, very little, if any, of ATULC’s functions are *not* directed to influencing politics in some capacity, either through the making of political expenditures to candidates and political committees or through the purchase of professional lobbying services.

27. ATULC’s annual expenditures from the period of 2014-2018 make clear that it has been a political committee continuously throughout this period, or alternatively, that it was a political committee at least during election years, when its expenditures on electoral political activity comprised a particularly large percentage of its total expenditures.

28. For instance, the PDC believed that, of \$80,507 total expenditures in the 2014 calendar year, \$18,745 (23%) was spent on monetary contributions to candidates for public office. See

1 Complainant Return Letter for Case No. 43940, dated April 8, 2020, a true and correct copy of
2 which is attached hereto as **Exhibit D**, at p. 2. At least 23% of ATULC's 2014 expenditures went
3 directly to candidates for public office.

4 29. The PDC also believed that, of ATULC's \$101,443 in total expenditures in the 2016
5 calendar year, \$35,451 (35%) was spent on monetary contributions to candidates for public office.
6 *See id.* At least 35% of ATULC's 2016 expenditures went directly to candidates for public office.

7 30. The PDC also believed that of \$104,227 total expenditures in the 2018 calendar year,
8 \$31,367 (30%) was spent on monetary contributions to candidates for public office. *See id.*, at p.
9 3. At least 30% of ATULC's 2018 expenditures went directly to candidates for public office.

10 31. The PDC accepted, based solely on the claims of ATULC's counsel, that the ATULC spent
11 22.6% of its total expenditures from 2014 through 2018 on electoral political activity. *See id.*

12 32. These large percentages of spending mean that, in at least 2016, contributing directly to
13 political candidates mathematically must have been one of the top **two (2)** purposes of the ATULC.
14 For that year, if not **the** primary purpose, electoral political activity must at least be considered
15 one of the primary purposes, which is all that is required to be a political committee under
16 applicable precedent.

17 33. The PDC believed that, "[a]lthough the ATULC made expenditures in support of
18 candidates, the totality of the evidence does not suggest that ATULC is a political committee,
19 because the making of those expenditures was not its primary purpose, or even one of its primary
20 purposes." *See id.*

21 34. The PDC inexplicably concluded that it "found no evidence of a material violation that
22 would require conducting a more formal investigation into your complaint or pursuing
23 enforcement action in this instance concerning ATULC being a political committee." *See id.*

1 35. As such, the PDC dismissed the Foundation’s complaint pursuant to RCW 42.17A.755(1).
2 *See id.*, at p. 4.

3 36. The factual predicates for the PDC’s findings are set forth in greater detail in its Report of
4 Investigation, a true and correct copy of which is attached hereto as **Exhibit E**.

5 37. As noted in the Report of Investigation, the PDC purported to apply PDC Interpretation
6 07-02, which distills case law and other sources of legal guidance concerning the definition of
7 “political committee” under the FCPA. *See Ex. E*, at p. 2.

8 38. As set forth in Washington law, an organization is a “political committee” if it “[has] the
9 expectation of receiving contributions or making expenditures in support of, or opposition to, any
10 candidate or any ballot proposition.” *See* RCW 42.17A.005.

11 39. Accordingly, an organization may become a political committee under Washington law
12 under the “maker of expenditures prong” and/or under the “receiver of contributions prong.” *See*
13 *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass’n*, 111 Wn. App. 586, 598, 49 P.3d
14 894 (2002) (“*WEA*”).

15 40. PDC Interpretation 07-02 states that “a person is a political committee if that person
16 becomes a ‘receiver of contributions’ to support or oppose candidates or ballot propositions, or if
17 expenditures to support or oppose candidates or ballot propositions become one of the person’s
18 primary purposes.” *See id.*

19 41. Based on the figures articulated in its dismissal letter and its Report of Investigation, it
20 appears that the PDC accepted ATULC’s representations of its expenditures for each of the years
21 at issue, the amounts spent on electoral political activity, and the resulting percentages for each of
22 the calendar years 2014-2018. *See supra*, at ¶¶27-31.

23 42. To accept ATULC’s representations in this regard at face value was erroneous, however,
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1 as well as arbitrary and capricious, because its representations conflicted with information
2 available to the PDC *in its own records*.

3 43. To wit, C3 reports filed with the PDC by recipients of ATULC expenditures and in L3c
4 reports filed by ATULC, which are contained in the PDC's own database, show that ATULC's
5 total expenditures on electoral political activity were at least \$24,650 for the year 2014, \$45,550
6 for the year 2016 and \$32,150 for the year 2018, accounting for 31%, 45%, and 31% of its total
7 annual expenditures in those respective years, not 23%, 35% and 30% as ATULC claimed and the
8 PDC accepted.

9 44. When initially asked by the PDC in March, 2019, to provide information showing its
10 political expenditures, the ATULC deferred to the information contained within the PDC's
11 database as the "best record" of its expenditures, since the recipients would have reported receipt
12 of the contributions. This method of tabulating ATULC's expenditures is, incidentally, the same
13 method used by the Foundation in its complaint. *See Ex. B*, at p. 3 ("Tracking ATULC's political
14 expenditures in disclosures filed with the PDC is difficult. Since ATULC has not registered as a
15 political committee, the only records of its expenditures are those filed by recipients of ATULC
16 funds.").

17 45. However, when pressed by the PDC to provide its total political expenditures, on March
18 15, 2019, ATULC presented figures substantially lower than the information contained in the
19 PDC's database, without any evidentiary support for the figures.

20 46. It is these figures that appear in the PDC's Report of Investigation (*see Ex. E*) and
21 Complainant Return Letter (*see Ex. D*), leading to the inference that the PDC arbitrarily and
22 capriciously accepted the ATULC's representations, without even cross-referencing them to the
23 information appearing in its own database and documented in the Foundation's complaint.

1 47. In dismissing the Complaint, the PDC also appears to have accepted the ATULC's
2 argument that it could not be a "political committee" under the "receiver of contributions" prong,
3 because ATULC does not receive dues payments from individual union members, but instead
4 receives its revenue from local transit unions. *See Ex. D*, at p. 2.

5 48. This is an erroneous interpretation of prevailing law on the subject, because if that were
6 the law, then groups similar to ATULC would never have to disclose anything, while significantly
7 affecting Washington State politics.

8 49. Even if the law for groups like ATULC requires that the makers of the contributions have
9 actual or constructive knowledge that their contributions will be used for electoral political
10 activity, the persons in charge of the locals clearly knew of the political purposes of the
11 contributions.

12 50. On these specific facts, because ATULC has no "members" and because local ATU
13 chapters are the ones contributing to ATULC, the relevant question is whether local ATU chapter
14 officials have actual or constructive knowledge that the contributions will be used by ATULC for
15 electoral political activity.

16 51. Further, because the officials comprising ATULC's board are the same officials who make
17 contributions to ATULC on behalf of the ATU local chapters, these officials cannot deny having
18 actual notice, or at least constructive notice, of the extensive electoral political activity to which
19 ATULC puts these contributions. *See* correspondence dated January 31, 2019, Exhibit 2 to PDC's
20 Report of Investigation, at p. 2, and web citations contained therein (**Ex. E** hereto).

21 52. Although the stated goals of an organization are one of the factors the PDC may look to
22 when determining "political committee" status, in this case it appears that the PDC uncritically
23 accepted the characterizations of ATULC's counsel concerning the organization's stated goals and
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1 the efforts it uses to achieve them, discounting ATULC's own statements to the contrary.

2 53. For instance, the PDC appears to have accepted ATULC's argument that it "devotes its
3 efforts to functioning as a forum for Washington ATU locals and providing educational training
4 for those locals and their members, as well as to support substantial lobbying efforts at ATULC's
5 expense." *See id.*, at p. 1. ATULC provided no evidence in support of this characterization of its
6 purposes.

7 54. It is not apparent from the PDC's determination that it gave any consideration whatsoever
8 to ATULC's description of its purpose in explicitly political terms as set forth under penalty of
9 perjury in its Form 8871, nor that ATULC falsely claimed to be reporting contributions at the state
10 level. **Ex. A.**

11 55. On April 16, 2020, the Foundation brought these errors to the attention of the PDC, by way
12 of a request for reconsideration of its April 8 dismissal. A true and correct copy of this
13 correspondence, dated April 16, 2020, is attached hereto as **Exhibit F**.

14 56. The PDC denied the Foundation's request for reconsideration, however, on May 1, 2020.
15 *See* WAC 390-37-150(7). A true and correct copy of this correspondence, dated May 1, 2020, is
16 attached hereto as **Exhibit G**. As such, the PDC's dismissal of April 8 is final and ripe for this
17 Court's review under RCW 34.05.570.

18 **V. CLAIM**

19 **Petition for Review Pursuant to RCW 34.05.570**

20 57. The Foundation hereby incorporates the allegations in paragraphs 1-56 above, as if
21 fully set forth herein.

22 58. ATULC's violations throughout each of the calendar years 2014-2018, as set forth
23 above, are "actual violations," *i.e.*, they are neither "remediable violations" nor "technical
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1 corrections” under the 2018 FCPA amendments. *See* RCW 42.17A.755.

2 59. Based upon the foregoing facts, the ATULC was a “political committee”
3 continuously for the time period of 2014-2018.

4 60. Alternatively, based upon the foregoing facts, the ATULC was a “political
5 committee” in calendar years 2014, 2016, and 2018, when its annual expenditures for electoral
6 political activity represented over twenty percent (20%) of its total annual expenditures in each of
7 those calendar years.² Even ATULC’s reported expenditures for strictly electoral political activity,
8 vis-à-vis its total annual expenditures, beg the question of where and to whom money characterized
9 as office and administrative expenses (*e.g.*, 35% in 2017 for an organization *with no staff*) went,
10 and whether these expenditures were proper, or reflected ATULC’s living large off the backs of
11 its members.

12 61. Alternatively, ATULC was a political committee under the receiver of
13 contributions prong because, as an intermediate body, it is a “person” under RCW 42.17A.005(38)
14 with the expectation of receiving transfers of funds from local unions for political purposes,
15 thereby becoming a political committee under RCW 42.17A.005(40), irrespective of whether it
16 receives dues payments from individual union members.

17 62. The Freedom Foundation petitions this Court for review of a decision by PDC staff,
18 pursuant to the APA, to determine whether: (i) the PDC erred in its application of the definition of
19 “political committee” under Washington law to ATULC; (ii) the PDC erred by failing to analyze
20 the evidence in the administrative record and making findings without substantial evidentiary
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23 ² While the PDC has not established a universal threshold for determining when an entity makes sufficient political
24 expenditures to satisfy the primary purpose test and become a political committee, its regulations require out-of-state
political committees with limited reporting obligations to file a statement of organization as political committees with
full reporting obligations if more than 20 percent (20%) of their total expenditures are for electoral political activity
in Washington at any point in any calendar year. *See* WAC 390-16-049.

1 support; and (iii) the PDC acted arbitrarily and/or capriciously in ignoring evidence within its own
2 records concerning the actual amount of ATULC political contributions, in its handling of the
3 Foundation's Complaint.

4 a. Name and mailing address of the petitioner: The Freedom Foundation's
5 principal place of business is 2403 Pacific Ave. SE, Olympia, WA 98501, and
6 its mailing address is P.O. Box 552, Olympia, WA 98507.

7 b. Name and address of petitioner's attorneys: The Foundation is represented by
8 Eric Stahlfeld and Robert A. Bouvatte, Jr., c/o Freedom Foundation, P.O. Box
9 552, Olympia, WA, 98501.

10 c. Name and mailing address of the agency whose action is at issue: Review is
11 being sought as to a decision by staff of the Public Disclosure Commission of
12 the State of Washington, 711 Capitol Way, Room 206, P.O. Box 40908,
13 Olympia, WA, 98504-0908.

14 d. Agency action at issue, together with a duplicate copy: At issue is the PDC's
15 dismissal on April 8, 2020 of the Freedom Foundation's complaint against the
16 ATULC, delivered electronically on December 11, 2018 and assigned PDC
17 Case No. 43940 (a copy is at **Exhibit D**); also at issue is the PDC's denial of
18 reconsideration with respect to Case No. 43940, entered May 1, 2020, as to the
19 Foundation's request, delivered electronically on April 16, 2020 (copies are at
20 **Exhibits F & G**).

21 e. Identification of persons who were parties to the PDC Decision: The parties to
22 the PDC proceeding were the Foundation, who filed the complaint and is
23 Petitioner herein, and the ATULC, which submitted its first response to the
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Foundation's complaint on January 17, 2019.

f. Facts demonstrating the Foundation is entitled to obtain judicial review: Facts demonstrating that the Foundation has standing to obtain judicial review, individually and in a representative capacity, are the PDC decision, which prejudices the Foundation by permitting the ATULC to conceal its political activities and to unduly influence the election of friendly officials throughout the State of Washington, where the Foundation has Board members and supporters; that the Foundation was a party to the PDC proceeding below, and the PDC was required to consider its interests in reaching a decision; and that the Court's ruling that the PDC's decision is in error would eliminate and redress the prejudice caused by PDC's decision.

g. Reasons relief should be granted: The PDC erred below to the extent it concluded that: (i) there was no evidence of a material violation by ATULC justifying further investigation or enforcement action pursuant to RCW 42.17A.755, despite ignoring the evidence in its own database contradicting the figures presented by ATULC; (ii) the ATULC's admitted expenditures for electoral political activity did not make it a "political committee," because such expenditures were not one of its primary purposes; and (iii) creating a rule of law that an intermediate body of a labor union cannot be a political committee as a "receiver of contributions" where it receives money from local unions rather than from individual members. The PDC erroneously interpreted or applied the law; the order is outside the PDC's statutory authority/jurisdiction under the FCPA; the PDC decision is not supported by substantial evidence, to

1 the extent there are findings, or, to the extent findings, if any, merely recite what
2 ATULC's counsel wrote the PDC, the decision is not supported by sufficient
3 findings and/or is arbitrary and capricious; the PDC has not decided all issues
4 requiring its resolution; the PDC has engaged in an unlawful procedure and/or
5 decision-making process, and the PDC failed to follow a prescribed procedure.
6 *See* RCW 34.05.570(3)(b)-(f), (i); *see also* RCW 34.05.570(04) (providing for
7 judicial review of other agency action).

8 **VII. REQUESTED RELIEF**

9 **WHEREFORE**, Plaintiff requests the following forms of relief:

10 1. An order, as authorized by RCW 34.05.574:

11 a. for declaratory judgment that the PDC was incorrect in concluding (i) that there
12 was no evidence of a material violation by ATULC that would require further investigation or
13 enforcement action pursuant to RCW 42.17A.755, and (ii) that the totality of evidence
14 suggested that ATULC was not a political committee;

15 b. setting aside the PDC's decision resolving Case No. 43940 with a dismissal of the
16 complaint against ATULC pursuant to RCW 42.17A.755(1);

17 c. if the Court will not impose remedies directly on the ATULC as requested below,
18 remanding this matter to the PDC and ordering the PDC to impose penalties on ATULC for its
19 numerous FCPA violations;

20 2. An order reversing the PDC decision below and ruling that the ATULC is liable for its
21 violations of the FCPA, as detailed herein;

22 3. Preliminary and permanent injunctive relief against ATULC, requiring it to register as a
23 political committee pursuant to RCW 42.17A.205 by filing a Statement of Organization pursuant
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1 thereto, and to file the required reports for all years in which it should have been registered as a
2 political committee, pursuant to RCW 42.17A.235 and RCW 42.17A.240, and prohibiting it from
3 further violating the FCPA, as detailed herein;

4 4. For such remedies against the ATULC as the Court deems appropriate under RCW
5 34.05.574(3) and RCW 42.17A.750, including:

- 6 a. a Ten Thousand Dollar (\$10,000.00) penalty pursuant to RCW 42.17A.750(1)(c)
7 for each of the ATULC's violations of RCW 42.17A.205, RCW 42.17A.235 and
8 RCW 42.17A.240, in an amount to be determined at trial;
- 9 b. a penalty equivalent to the amount of contributions ATULC failed to report to the
10 PDC as required by RCW 42.17A.235 and RCW 42.17A.240, pursuant to RCW
11 42.17A.750(1)(g);
- 12 c. a Ten Dollar (\$10.00) penalty for each day ATULC failed to file its Statement of
13 Organization within the time required by RCW 42.17A.205, pursuant to RCW
14 42.17A.750(1)(e);
- 15 d. a Ten Dollar (\$10.00) penalty for each day ATULC failed to file its Monetary
16 Contributions (C-3) Reports and Summary Full Campaign Contribution &
17 Expenditure (C-4) Reports, within the time required by RCW 42.17A.235 and
18 RCW 42.17A.240, pursuant to RCW 42.17A.750(1)(e);
- 19 e. a finding that the ATULC's violations were intentional and trebling the amount of
20 judgment, which for this purpose shall include costs, as authorized by RCW
21 42.17A.780; and
- 22 f. any other penalty the Court deems appropriate under RCW 42.17A.750.
- 23 g. All costs of investigation and trial, including reasonable attorneys' fees, as
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1 authorized by RCW 42.17A.775(5).

2 5. All such other relief the Court deems appropriate.

3
4 Dated this 7th day of May, 2020.

5 FREEDOM FOUNDATION

6 

7 By: _____
Robert A. Bouvate, Jr., WSBA #50220

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Peter Lavallee, Executive Director
Washington State Public Disclosure Commission
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Olympia, WA 98501

Rick Swartz, President
Amalgamated Transit Union Legislative Council
1308 Meador Ave #C-1
Bellingham WA 98229


By: 
Jennifer Matheson

EXHIBIT A

**Political Organization
Notice of Section 527 Status**

Part I General Information

1 Name of organization

Amalgamated Transit Union Legislative Council

Employer identification number

91 - 2064706

2 Mailing address (P.O. box or number, street, and room or suite number)

509 12th Ave SE, Ste 10

City or town, state, and ZIP code

Olympia, WA 98501 -

3 Check applicable box: ☒ Initial notice ☐ Amended notice ☐ Final notice

4a Date established

04/17/2007

4b Date of material change

5 E-mail address of organization

kdstites@yahoo.com

6a Name of custodian of records

Karen Stites

6b Custodian's address

509 12th Ave SE, Ste 10

Olympia, WA 98501 -

7a Name of contact person

Karen Stites

7b Contact person's address

509 12th Ave SE, Ste 10

Olympia, WA 98501 -

8 Business address of organization (if different from mailing address shown above). Number, street, and room or suite number

509 12th Ave SE, Ste 10

City or town, state, and ZIP code

Olympia, WA 98501 -

9a Election authority

NONE

9b Election authority identification number

Part II Notification of Claim of Exemption From Filing Certain Forms (see instructions)

10a Is this organization claiming exemption from filing Form 8872, Political Organization Report of Contributions and Expenditures, as a qualified state or local political organization? Yes ☒ No ☐

10b If 'Yes,' list the state where the organization files reports: WA

11 Is this organization claiming exemption from filing Form 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or associations of state or local officials? Yes ☒ No ☐

Part III Purpose

12 Describe the purpose of the organization

A QSLOP - To promote legislation and candidates supportive for Amalgamated Transit Union member in the State of Washington

Part IV List of All Related Entities (see instructions)**13 Check if the organization has no related entities**

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14a Name of related entity	14b Relationship	14c Address
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Part V List of All Officers, Directors, and Highly Compensated Employees (see instructions)

15a Name	15b Title	15c Address
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Dennis Antonellis	President	1226 N. Howard St. Spokane, WA 99201 - 2410
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Rick Sepolen	Vice President	2815 2nd Ave Ste 230 Seattle, WA 98121 - 1261
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Karen Stites	Secretary/Treasurer	509 12th Ave SE, Ste 10 Olympia, WA 98501 -
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Under penalties of perjury, I declare that the organization named in Part I is to be treated as a tax-exempt organization described in section 527 of the Internal Revenue Code, and that I have examined this notice, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I am the official authorized to sign this report, and I am signing by entering my name below.

Karen Stites

05/29/2007

**Sign
Here**

Name of authorized official



Date

EXHIBIT B

December 11, 2018

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

Public Disclosure Commission Staff,

Pursuant to RCW 42.17A.775, I write to report violations of the Fair Campaign Practices Act (“FCPA”), Chapter 42.17A RCW, by the Amalgamated Transit Union Legislative Council of Washington State (“ATULC”).¹

In brief, ATULC has operated as a political committee for years without filing a statement of organization with the Public Disclosure Commission (“PDC”) as required by RCW 42.17A.205. As an unregistered political committee, ATULC has also failed to comply with the other provisions of Chapter 42.17A RCW governing the conduct and reporting requirements of political committees.

ATULC not only describes its purpose in explicitly political terms, but it receives contributions from ATU locals around Washington with the understanding the funds will be used to advance electoral political activity. In election years, ATULC spending on political activity increases dramatically, to half or more of its total expenditures. ATULC has no full-time staff and, beyond what appear to be basic administrative costs, has little-to-no expenses other than political contributions. Accordingly, it satisfies both the “receiver of contributions” and “maker of expenditures” prongs of the definition of “political committee” as recognized by the courts and should be held to account for its lack of disclosure.

Factual background

Section 40.2 of the Amalgamated Transit Union (“ATU”) Constitution and General Laws allows local unions in a state to form a statewide entity for the purpose of coordinating political activity, providing:

“Where a majority of the LUs [local unions] in a state or province, with the approval of the IU [international union], enact to form a joint conference board for mutual aid and protection, exchange of information, the furthering of organizing and organizing campaigns, legislative and political action, and community action programs, in accordance with the charters or directions issued by the IU, then, in that event, all LUs within that state or province shall be obligated to affiliate and support the work of such

¹ 1308 Meador Ave C-1, Bellingham, WA 98229. (360) 738-3299. President: Randal Son, atulcpres@gmail.com. Vice president: Rick Swartz, atu883finsec@comcast.net. Secretary-treasurer: AJ Wolcott, atulc.fst@gmail.com

joint conference board. The conference board shall establish monthly per capita tax through the bylaws of such conference board as approved by the IP [international president].”²

See Appendix page 171.

The ATULC is such a “joint conference board” for ATU locals in Washington. Its website describes its purpose as follows:

“The Washington State Legislative Council exists under the authorization of the Amalgamated Transit Union International Constitution and General By-Laws.

To protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local Unions embodied within the State of Washington.

To promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State.

To cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered.

To encourage our memberships to be politically alert on matters that affect their livelihood, and create a more favorable public sentiment towards the Transportation Industry.”³

See App. 206.

The ATULC filed a form 8871, notice of Section 527 status, with the Internal Revenue Service (“IRS”) in 2007, claiming the tax benefits of a “political organization” under federal law. *See App. 207.* 26 U.S.C. § 527(e)(1) defines “political organization” as:

“...a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.”

“Exempt function” is defined by subsection (e)(2) as:

“...the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office...”

ATULC describes its purpose on its form 8871 as, “promot[ing] legislation and candidates

² A copy of the ATU Constitution is available online at: https://www.atu.org/atu-pdfs/CGL2016_FINAL.pdf

³ Available online at: http://www.atulcwa.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=510298

supportive for Amalgamated Transit Union member in the State of Washington” (errors in original). *See App. 207.*

According to financial disclosure forms LM-3 ATULC files with the U.S. Department of Labor’s Office of Labor Management Standards (“OLMS”) in accordance with the federal Labor Management Reporting and Disclosure Act of 1959, ATULC has no paid staff and is run by a board of unpaid volunteers comprised of union officials from ATU locals in Washington. *See App. 236.*

Its forms LM-3 divide ATULC’s annual expenditures into four categories: (1) Office and administrative expense⁴; (2) professional fees⁵; (3) contributions, gifts and grants⁶; and (4) other.⁷ *See App. 213, 217, 222, 227, 232, and 237.*

Year	Total Receipts	Total Disbursements	Office and Administrative Expense		Professional Fees		Contributions, gifts and grants		PDC Contributions		
			Amount	% of Disbursements	Amount	% of Disbursements	Amount	% of Disbursements	PDC Contributions	% of Disbursements	% of Receipts
2012	\$55,770	\$73,447	\$4,990	6.8%	\$2,000	2.7%	\$66,457	90.5%	\$61,265	83.4%	109.9%
2013	\$81,659	\$45,619	\$7,355	16.1%	\$3,014	6.6%	\$35,250	77.3%	\$12,000	26.3%	14.7%
2014	\$89,954	\$80,506	\$11,688	14.5%	\$32,224	40.0%	\$36,594	45.5%	\$24,650	30.6%	27.4%
2015	\$85,714	\$61,378	\$15,118	24.6%	\$35,860	58.4%	\$10,400	16.9%	\$4,900	8.0%	5.7%
2016	\$85,408	\$101,442	\$21,549	21.2%	\$29,410	29.0%	\$49,500	48.8%	\$43,050	42.4%	50.4%
2017	\$92,753	\$67,153	\$23,568	35.1%	\$33,885	50.5%	\$9,700	14.4%	\$3,950	5.9%	4.3%
Total	\$491,258	\$429,545	\$84,268	19.6%	\$136,393	31.8%	\$207,901	48.4%	\$149,815	34.9%	30.5%

Beyond the basic administrative costs necessary to exist, ATULC’s only expenditures are for “contributions, gifts and grants.” On average, this category accounts for half of ATULC’s expenditures, a proportion that consistently spikes during election years.

Most, if not all, of the expenditures in the “contributions, gifts and grants” category are for political contributions to candidates, ballot measures and political committees.

For instance, on its forms LM-3 for 2014 and 2015, ATULC itemized its political contributions under item 56, reporting \$29,150 in contributions in 2014 (out of \$36,594 total contributions, gifts and grants) and \$10,400 in 2013 (exactly the same as the amount of reported contributions, gifts and grants). *See App. 223 and 228.*

Tracking ATULC’s political expenditures in disclosures filed with the PDC is difficult. Since ATULC has not registered as a political committee, the only records of its expenditures are those filed by recipients of ATULC funds. Recipients use multiple different titles/labels to describe ATULC.

Records the Freedom Foundation has been able to identify appear to indicate that ATULC made political expenditures totaling at least \$61,265 in 2012, \$12,000 in 2013, \$24,650 in 2014,

⁴ See Statement B, item 48 of the forms LM-3.

⁵ See Statement B, item 49 of the forms LM-3.

⁶ See Statement B, item 51 of the forms LM-3.

⁷ See Statement B, item 54 of the forms LM-3. There are no expenses listed in this category for 2012-15 or 2017. There are \$983 worth of “other” expenses recorded on the 2016 form LM-3.

\$4,900 in 2015, \$43,050 in 2016, \$3,950 in 2017, and \$30,000 in 2018. *See App. 239-245.*

Violations of the FCPA

RCW 42.17A.205 requires every “political committee” to “file a statement of organization” with the PDC “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.005(40) defines “political committee” as:

“...any person... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”

Three Washington court decisions have clarified and interpreted this definition.

In *State of Washington v. Dan J. Evans Campaign Committee*, 86 Wn.2d 503 (1976), the State Supreme Court determined that an entity satisfies the expenditures prong of the definition of “political committee” if affecting, “directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions” is “the primary or one of the primary purposes” of the entity.

In *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398 (2015), the Washington State Supreme Court confirmed that an organization may be considered a “political committee” if *one* of its primary purposes is to engage in electoral political activity; electoral political activity need not be *the* primary purpose of the entity for it to fulfill the definition of “political committee.”

Lastly, in *State ex rel. Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. 586 (2002), the court of appeals interpreted the definition of “political committee” to mean,

“...a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.”

ATULC fulfills both the “receiver of contributions” and “maker of expenditures” prongs of the definition of “political committee.”

The per capita payments ATULC receives from ATU locals in Washington are contributions made in expectation of furthering electoral political goals. Because the bylaws of the national ATU requires ATU locals to pay per capita taxes to ATULC as a “joint conference board,” ATULC has an expectation of receiving and does receive the per capita payments to use as political contributions.

This alone is sufficient to qualify ATULC as a political committee under the “receiver of contributions” prong. However, ATULC also fulfills the “expenditures prong” of the definition

of “political committee.”

In *EFF v. WEA*, the appeals court expounded on the primary purpose test established by the State Supreme Court in *State of Washington v. Dan Evans*, including the following observations:

“...an appropriate framework for determining whether electoral political activity is one of an organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question. Under this analysis, a nonexclusive list of analytical tools a court may use when evaluating 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 and mission.”

ATULC repeatedly describes its own purpose as engaging in “political activity” and “promoting candidates.”

Additionally, the organization’s actions clearly line up with its stated goals. Indeed, an analysis of ATULC’s finances indicates that it performs no substantive function that is not political. Other than administrative expenses, ATULC appears to have few expenses other than the making of political contributions. With no staff and little other measurable activity to speak of, it does not appear that ATULC “uses means other than electoral political activity to achieve its stated [political] goals and mission.”

To be considered a “political committee” under the expenditures prong for the purposes of the FCPA, ATULC need only have as *one* of its primary purposes the influencing of electoral political activity. It meets this threshold without question.

Lastly, it is worth noting that, in a situation with almost identical facts, the Washington State Attorney General’s Office is currently prosecuting the SEIU Washington State Council for its failure to register and report to the PDC as a political committee.⁸ Like ATULC, the SEIU Washington State Council is an entity created under the national SEIU bylaws that collects a per capita tax from all SEIU locals in Washington for the purposes of engaging in and coordinating SEIU’s electoral political activity in Washington.

Conclusion

ATULC’s failure to register and report as a political committee as required by the FCPA has tangibly negative implications for the transparency of Washington elections. For example, political contributions made by ATULC are labeled differently by various recipients of ATULC funds, making it difficult to know the true source of the contributions and to track ATULC’s

⁸ Washington State Office of the Attorney General. “AGO files campaign finance complaint against SEIU Washington State Council.” July 11, 2017. <https://www.atg.wa.gov/news/news-releases/ago-files-campaign-finance-complaint-against-seiu-washington-state-council>

political activity.

Further, the reporting regime required by the law requires both the contributing political committee and the receiving political committee or candidate to report the transaction to the PDC. This dual reporting promotes transparency, as both the contributor and recipient would have to fail to report the transfer of funds for it to go unnoticed. ATULC's failure to properly register as a political committee thwarts this system of accountability. Since ATULC already does not report its contributions, the transfer of funds would be invisible to the public if only the recipients of ATULC funds neglected to report as required.

We respectfully request that the PDC perform an investigation into these allegations and take appropriate enforcement action. Please do not hesitate to contact me if I can be of assistance.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a stylized, cursive script.

Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

EXHIBIT C

April 15, 2019

Kurt Young
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: Case No. 43940

Mr. Young,

Additional information has come to my attention that is relevant to the Public Disclosure Commission's ("PDC") ongoing investigation into the alleged violations of the Fair Campaign Practices Act ("FCPA") by the Amalgamated Transit Union Legislative Council ("ATULC").

As you know, my original complaint examined ATULC's political activity from 2012 through 2017 and contended that it should have registered with the PDC as a political committee. However, reports recently made publicly available suggest ATULC continued to function as an unregistered political committee throughout calendar year 2018.

As discussed in the original complaint, ATULC is required by the Labor Management Reporting and Disclosure Act of 1959 to annually file financial disclosure forms LM-3 with the U.S. Department of Labor's Office of Labor Management Standards ("OLMS"). ATULC's form LM-3 for calendar year 2018 was recently filed with OLMS. **See Appendix pages 2-6.**

ATULC's forms LM-3 generally divide its annual expenditures into four categories: (1) Office and administrative expense¹; (2) professional fees²; (3) contributions, gifts and grants³; and (4) other.⁴ ATULC recorded paying its officers and staff for the first time on its 2018 LM-3.⁵ For the purposes of the chart below, the amount paid to ATULC's officers is included as part of "office and administrative expenses."

The LM-3 indicated ATULC had total revenue of \$82,245 and made \$104,295 in disbursements in 2018. Over the same period, C3 and C4 reports filed with the PDC by recipients of ATULC contributions indicate it made at least \$30,250 in reportable political expenditures in 2018. **See App. 7.** Thus, *at least* 29% of ATULC's disbursements and 36.8% of its revenue went towards reportable political expenditures in 2018.

¹ See Statement B, item 48 of the forms LM-3.

² See Statement B, item 49 of the forms LM-3.

³ See Statement B, item 51 of the forms LM-3.

⁴ See Statement B, item 54 of the forms LM-3.

⁵ See Statement B, item 45 of the forms LM-3.

Year	Total Receipts	Total Disbursements	Office and Administrative Expense		Professional Fees		Contributions, gifts and grants		PDC Contributions		
			Amount	% of Disbursements	Amount	% of Disbursements	Amount	% of Disbursements	PDC Contributions	% of Disbursements	% of Receipts
2012	\$55,770	\$73,447	\$4,990	6.8%	\$2,000	2.7%	\$66,457	90.5%	\$61,265	83.4%	109.9%
2013	\$81,659	\$45,619	\$7,355	16.1%	\$3,014	6.6%	\$35,250	77.3%	\$12,000	26.3%	14.7%
2014	\$89,954	\$80,506	\$11,688	14.5%	\$32,224	40.0%	\$36,594	45.5%	\$24,650	30.6%	27.4%
2015	\$85,714	\$61,378	\$15,118	24.6%	\$35,860	58.4%	\$10,400	16.9%	\$4,900	8.0%	5.7%
2016	\$85,408	\$101,442	\$21,549	21.2%	\$29,410	29.0%	\$49,500	48.8%	\$43,050	42.4%	50.4%
2017	\$92,753	\$67,153	\$23,568	35.1%	\$33,885	50.5%	\$9,700	14.4%	\$3,950	5.9%	4.3%
2018	\$82,245	\$104,295	\$27,113	26.0%	\$42,282	40.5%	\$34,900	33.5%	\$30,250	29.0%	36.8%
Total	\$573,503	\$533,840	\$111,381	20.9%	\$178,675	33.5%	\$242,801	45.5%	\$180,065	33.7%	31.4%

The amount spent by ATULC on reportable political activity in 2018 is sufficient to establish that electoral political activity continues to be one of its primary purposes, lobbying being the only other noteworthy purpose as reflected both by the union's own description of its mission and its actual expenditures.

I hope this information proves useful to your investigation. 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,



Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

EXHIBIT D



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

April 8, 2020

Delivered electronically to Maxford Nelson with the Freedom Foundation

Subject: Complaint regarding the Amalgamated Transit Union Legislative Council of Washington State, PDC Case 43940

Dear Mr. Nelson:

The Public Disclosure Commission (PDC) has completed its investigation of the complaint you filed against the Amalgamated Transit Union Legislative Council of Washington State (ATULC). The complaint alleged that the ATULC may have violated RCW 42.17A.205 by failing to register as a political committee by completing a Committee Registration (C-1pc report), and RCW 42.17A.235 and .240 by failing to timely file Monetary Contributions reports (C-3 reports) and Summary Full Campaign Contribution and Expenditure reports (C-4 reports) disclosing contribution and expenditure activities undertaken during calendar years 2014 through 2018.

PDC staff reviewed the allegations listed in the complaint you filed, the statutes, rules and reporting requirements, queried the PDC contribution and expenditure database for ATULC activities, reviewed the Annual Report of Lobbyist Employers (L-3 reports) and the Monthly Lobbyist Employer Contributions report (L-3c reports) filed by the ATULC, and the response and attached exhibits to the complaint provided by Dmitri Iglitzin, an attorney on behalf of Schwerin Campbell Barnard Iglitzin & Lavitt LLP on behalf of ATULC.

- ATULC has been registered with the PDC as a Lobbyist Employer dating back to at least 1996, filing L-3 and L-3c reports disclosing expenditures made to hire a contract lobbyist to lobby, and contributions made to candidates and political committees.
- The Commission had adopted **PDC Interpretation 07-02, Primary Purpose Test Guidelines**, which 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.
- Mr. Iglitzin stated the ATULC “*devotes its efforts to functioning as a forum for Washington State ATU locals and providing educational training for those locals and their members, as well as to support substantial lobbying efforts at ATULC’s expense.*”

- Mr. Iglitzin acknowledged ATULC made expenditures in support of candidates or election initiatives during the period covered in the complaint, however *“electoral political activity is not one of ATULC’s primary purposes.”* He stated that ATULC’s goals and *“its actions to further those goals, the impact of a favorable election on those goals, and the means which ATULC uses to achieve those goals all establish that the organization does not qualify as a political committee under the expenditures prong.”*
- Mr. Iglitzin stated that ATULC’s own website explains that its purposes are to: (1) *“Protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local unions embodied within the State of Washington; (2) Promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State; (3) Cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered; and (4) Encourage our memberships to be politically alert on matters that affect their livelihood and create a more favorable public sentiment towards the Transportation Industry.”*
- Mr. Iglitzin stated ATULC does not receive dues payments from individual union members, but receives lump sum transfers from local transit unions, and does not qualify as a political committee under the “receiver of contributions.” In addition, he stated ATULC does not qualify as a political committee under the “maker of expenditures” found in RCW 42.17A.005(41) which *“not only have made or expected to make expenditures in support of a candidate or election initiative, it must also have had as one of its primary purposes supporting election candidates or initiatives.”* He provided information in response to staffs request concerning ATULC expenditure activities for calendar years 2014, 2016, and 2018 and staff reviewed filing information covering 2014-2018, that included the following:

2014 calendar year: Mr. Iglitzin stated ATULC made \$80,507 in total expenditures that included \$18,745 in monetary contributions made to 2014 candidates for public office. He stated that the percentage of expenditures for contributions made to total contributions represented 23%.

2015 calendar year: Staff’s review found that ATULC filed two L-3c reports disclosing five monetary contributions totaling \$3,900 were made to two 2015 candidates for public office, one caucus political committee, one legislative district party committee, and one caucus related political committee.

2016 calendar year: Mr. Iglitzin stated ATULC made \$101,443 in total expenditures that included \$35,451 in monetary contributions made to 2016 candidates for public office. He stated that ATULC’s percentage of expenditures for contributions made to total contributions represented 35% for calendar year 2016.

Staff’s review of the L-3 report filed by the ATULC disclosed that Johnson Arledge Strategies, a contract lobbying firm, received a total of \$25,200 in compensation to lobby during calendar year 2016. The L-3 report for 2016 was required to have been filed the last day of February 2017 and was filed almost one year late on January 31, 2018.

In addition, staff’s review found the L-3c reports filed by ATULC for calendar year 2016 were timely filed disclosing 41 monetary contributions totaling \$34,500 except for one contribution disclosed one day late.

2017 calendar year: Staff's review found that ATULC filed two L-3c reports disclosing six monetary contributions totaling \$3,250 that were made to 2017 candidates for public office.

2018 calendar year: Mr. Iglitzin stated ATULC made \$104,227 in total expenditures that included \$31,367 in monetary contributions made to 2018 candidates for public office. He stated that ATULC's percentage of expenditures for contributions made to total contributions represented 30% in calendar year 2018.

Staff's review of the L-3 report filed by the ATULC disclosed that the Arledge Group, a contract lobbying firm, received a total of \$33,096 in compensation to lobby during calendar year 2018. The L-3 report for 2018 was required to have been filed the last day of February 2019 and was timely filed on February 28, 2019.

- Mr. Iglitzin stated that ATULC devotes its efforts, time and resources in three main areas that includes supporting "*substantial lobbying efforts at ATULC's expense*" at the state level; providing educational training for Amalgamated Transit Union (ATU) locals and their members; and providing a forum for information to ATU locals and their members. He stated one of ATULC purposes is to support legislation through lobbying efforts and added "*while ATULC participates in elections by making contributions that support candidates, or that support or oppose ballot measures, it is not one of ATULC's primary purposes.*"
- Mr. Iglitzin stated that an analysis of ATULC's average spending indicated that only 22.6% of its expenditures over the past five years has been dedicated to electoral political activity, but by contrast, ATULC spent just shy of that – 22.3% of its expenditures over five years – on office and administrative expenses alone. He added that ATULC spent roughly the same amount of money supporting (or opposing) candidates and ballot initiatives for 2014 through 2018 as it spent on overhead, which does not indicate it's one of ATULC's primary purposes.

ATULC is a Lobbyist Employer registered and reporting with the PDC and one of its primary purposes is to support legislation through lobbying efforts, to which ATULC devotes significant resources and time on. ATULC also spends resources for ATU local members and membership services, transportation and transit issues, and overhead, and ATULC's stated goals and mission extend beyond making contributions to candidates for public office and political committees.

PDC staff found no evidence of a material violation that would require conducting a more formal investigation into your complaint or pursuing enforcement action in this instance concerning ATULC being a political committee. Based on our review of the facts, the majority of ATULC activities do not involve making contributions to candidates for public office, and do not appear to involve electoral political activity at all. ATULC's percentage of expenditures for monetary contributions to candidates and political committees was 35% in 2016, and 30% in 2018, respectively, however staff noted that 33 of the 41 contributions made in 2016, were made on two dates, June 3, 2016 (21 contributions), and September 16, 2016 (11 contributions).

Staff noted that more than 80% of the ATULC contributions made to candidates for public office in 2016, were made over the course of two days, whereas its lobbying and membership outreach and services were pretty much ongoing throughout the calendar year. Although the ATULC made expenditures in support of candidates, the totality of the evidence does not suggest that ATULC is a political committee, because the making of those expenditures was not its primary purpose, or even one of its primary purposes.

On April 2, 2020, ATULC completed a Statement of Understanding (SOU) and paid a \$150 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging a violation of RCW 42.17A.630 for failing to timely file the Annual Report of Lobbyist Employers (L-3 reports) for calendar year 2016.

The \$150 penalty assessed in this matter resolves the issue of the late filed L-3 report for 2016.

Based on this information, PDC staff is dismissing this matter against the Amalgamated Transit Union Legislative Council of Washington State in accordance with RCW 42.17A.755(1). If you have questions, you may contact me at (360) 664-8854, toll-free at 1-877-601-2828, or by e-mail at kurt.young@pdc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Electronically Signed, Kurt Young
Compliance Officer

/s _____
Electronically Signed BG Sandahl, Deputy Director
for Peter Lavalley, Executive Director

cc: Dmitri Iglitzin, on behalf of the ATULC



EXHIBIT E



State of Washington

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908

(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Amalgamated Transit Union
Legislative Council of Washington
State

Respondent.

PDC Case 43940

Report of Investigation

I.

Background, Complaint and Allegations

- The Amalgamated Transit Union Legislative Council of Washington State has been registered with the PDC as a Lobbyist Employer dating back to at least 1996, filing L-3 and L-3c reports disclosing expenditures made to hire a contract lobbyist to lobby, and contributions made to candidates and political committees.
- On December 11, 2018, the Public Disclosure Commission (PDC) received a complaint filed by Maxford Nelson with the Freedom Foundation against the Amalgamated Transit Union Legislative Council of Washington State (ATULC), alleging that the ATULC may have violated: (1) RCW 42.17A.205 by failing to register as a political committee by filing a Committee Registration (C-1pc report); and (2) RCW 42.17A.235 and .240 by failing to timely file Monetary Contributions reports (C-3 reports) and Summary Full Campaign Contribution and Expenditure reports (C-4 reports) disclosing contribution and expenditure activities undertaken during calendar years 2014 through 2018. **Exhibit #1.**
- On January 31, 2019, Mr. Nelson on behalf of the Freedom Foundation, submitted a supplemental letter in response to the letter submitted by Mr. Iglitzin. **Exhibit #2.**
- On March 7, 2019, the PDC opened a formal investigation into the Committee concerning the allegations listed in the complaint filed against the ATULC and held an Initial Hearing (Case Status Review Hearing) pursuant to RCW 42.17A.755 and WACs 390-37-060 and 390-37-071.

II.

Findings

- As a Lobbyist Employer registered and reporting with the PDC, ATULC has as one of its primary purposes is to support legislation through lobbying efforts, to which ATULC devoted significant resources and time on based on staff's review. ATULC also spends resources for ATU local members and membership services, transportation and transit issues, and overhead, and ATULC's stated goals and mission extend beyond making contributions to candidates for public office and political committees.
- The Commission had adopted **PDC Interpretation 07-02, Primary Purpose Test Guidelines**, which 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). The Interpretation goes on to state the following:

"The trial court here adopted the broad standard "*one of the* primary purposes" and applied it in formulating its own rule: **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 begins its analysis by noting that the trial court "correctly formulated this rule, and as the only mandatory authority on this issue, *Evans* controls interpretations of the "maker of expenditures" prong." In addition, the declaration of policy at the beginning of the Public Disclosure Act states that its "provisions are to be liberally construed "to promote complete disclosure of ... political campaigns...." RCW 42.17.010(11). The Interpretation states: "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."

The Interpretation also discusses "**a nonexclusive list of analytical tools** a court may use when evaluating 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 and mission."

- Staff's review of the response from Dmitri Iglitzin, an attorney on behalf of Schwerin Campbell Barnard Iglitzin & Lavitt LLP on behalf of Amalgamated Transit Union Legislative Council of Washington State (ATULC), and the lobbying activities undertaken by the ATULC for calendar years 2014 through 2018, including contributions made to candidates and political committees, found the following as detailed below.

2014 calendar year:

- ATULC made \$80,507 in total expenditures that included \$18,745 in monetary contributions made to 2014 candidates for public office. He stated that the percentage of expenditures for contributions made to total contributions represented 23%.

- Staff's review of the L-3 report filed by the ATULC for calendar year 2014 disclosed Cody Arledge, a contract lobbyist, received a total of \$31,999 in compensation to lobby. The L-3 report for 2014 was required to have been filed the last day of February 2015 and was filed almost one year late on February 22, 2016.

2015 calendar year:

- Staff's review found that ATULC filed two L-3c reports disclosing five monetary contributions totaling \$3,900 were made to two 2015 candidates for public office, one caucus political committee, one legislative district party committee, and one caucus related political committee.
- The review also found that ATULC filed the L-3 report disclosing Cody Arledge, a contract lobbyist, received a total of \$35,600 in compensation to lobby during calendar year 2015. The L-3 report for calendar year 2015 was required to have been filed by ATULC by the last day of February 2016 and was timely filed on February 22, 2016.

2016 calendar year:

- ATULC made \$101,443 in total expenditures that included \$35,451 in monetary contributions made to 2016 candidates for public office. He stated that ATULC's percentage of expenditures for contributions made to total contributions represented 35% for calendar year 2016.
- Staff's review of the L-3 report filed by the ATULC disclosed that Johnson Arledge Strategies, a contract lobbying firm, received a total of \$25,200 in compensation to lobby during calendar year 2016. The L-3 report for 2016 was required to have been filed the last day of February 2017 and was filed almost one year late on January 31, 2018. Staff's review found the L-3c reports filed by ATULC for calendar year 2016 timely disclosed 41 monetary contributions totaling \$34,500 except for one contribution disclosed one day late as follows:

Contribution Date	Date Due	Date Filed	# of contributions	Amount	Days Late
2/11/2016	3/15/2016	2/24/2016	1 to Dime PAC	\$ 1,500	0
4/22/2016	5/16/2016	5/17/2016	1 to Dime PAC	\$ 8,500	1
5/20/2016	6/15/2016	5/25/2016	2 to local Candidates	\$ 2,000	0
6/3/2016	7/15/2016	7/2/2016	21 to Leg Candidates	\$ 8,500	0
7/20/2016	8/15/2016	8/2/2016	3 to 2 Leg and 1 Local Candidate	\$ 1,500	0
8/29/2016	9/15/2016	9/3/2016	1 local candidate	\$ 1,000	0
9/16/2016	10/15/2016	10/12/2016	11 to 9 Leg and 2 Local Candidate	\$ 11,000	0
10/6/2016	11/15/2016	11/1/2016	1 to Leg Candidate	\$ 500	0
Totals			41 total contributions	\$ 34,500	

2017 calendar year:

- Staff's review found that ATULC filed two L-3c reports disclosing six monetary contributions totaling \$3,250 were made to 2017 candidates for public office.

- The L-3 report filed by the ATULC disclosed that Johnson Arledge Strategies, a contract lobbying firm, received a total of \$31,976 in compensation to lobby during calendar year 2017. The L-3 report for 2017 was required to have been filed the last day of February 2018 and was timely filed on January 31, 2018.

2018 calendar year:

- ATULC made \$104,227 in total expenditures that included \$31,367 in monetary contributions made to 2018 candidates for public office. He stated that ATULC's percentage of expenditures for contributions made to total contributions represented 30% in calendar year 2018.
- Staff's review of the L-3 report filed by the ATULC disclosed that the Arledge Group, a contract lobbying firm, received a total of \$33,096 in compensation to lobby during calendar year 2018. The L-3 report for 2018 was required to have been filed the last day of February 2019 and was timely filed on February 28, 2019.

Responses from Dmitri Iglitzin:

- Mr. Iglitzin submitted a total of three responses on behalf of ATULC that included the initial response received by the PDC on January 19, 2019 (**Exhibit #3**); a supplemental response to PDC staff's questions that was received on March 11, 2019 (**Exhibit #4**); and additional information as a follow-up to the March 11th response that was received on March 15, 2019 (**Exhibit #5**).
- Mr. Iglitzin stated that ATULC devotes its efforts, time and resources in three main areas that includes supporting "*substantial lobbying efforts at ATULC's expense*" at the state level; providing educational training for Amalgamated Transit Union (ATU) locals and their members; and providing a forum for information to ATU locals and their members. As noted above, ATULC has been registered and reporting as a Lobbyist Employer for at least 25 years and lobbying activities are where the majority of ATULC funds are spent.
- Mr. Iglitzin stated that one of ATULC purposes is to support legislation through lobbying efforts and added "*while ATULC participates in elections by making contributions that support candidates, or that support or oppose ballot measures, it is not one of ATULC's primary purposes.*" He stated that an analysis of ATULC's average spending indicates only 22.6% of its expenditures over the past five years has been dedicated to electoral political activity. He stated by contrast, ATULC spent just shy of that – 22.3% of its expenditures over five years – on office and administrative expenses alone, and added ATULC spent roughly the same amount of money supporting/opposing candidates and ballot measures for the three year period as it spent on overhead, which does not indicate it's one of ATULC's primary purposes.
- Mr. Iglitzin stated the ATULC "*devotes its efforts to functioning as a forum for Washington State ATU locals and providing educational training for those locals and their members, as well as to support substantial lobbying efforts at ATULC's expense.*" He acknowledged ATULC made expenditures in support of candidates or election initiatives during the period covered in the complaint, however "*electoral political activity is not one of ATULC's primary purposes.*"

- Mr. Iglitzin stated that *“An assessment of whether electoral activity is one of an organization’s primary goals looks to, among other things, the stated goals and mission of the organization, whether the organization’s actions further its stated goals and mission, whether the stated goals and mission would be substantially achieved by a favorable outcome in an upcoming election, and whether the organization uses means other than electoral activity to achieve those goals... The stated goals of ATULC, its actions to further those goals, the impact of a favorable election on those goals, and the means which ATULC uses to achieve those goals all establish that the organization does not qualify as a political committee under the expenditures prong.”*
- Mr. Iglitzin stated that ATULC’s own website explains that its purposes are to: (1) *“Protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local unions embodied within the State of Washington; (2) Promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State; (3) Cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered; and (4) Encourage our memberships to be politically alert on matters that affect their livelihood and create a more favorable public sentiment towards the Transportation Industry.”*
- Mr. Iglitzin stated ATULC does not receive dues payments from individual union members, and instead receives lump sum transfers from local transit unions, with those lump sum transfers to ATULC from the locals being the only funds received. He stated individual members’ dues payments are not segregated into a fund for political purposes even at the local level, much less by ATULC and instead the ATU locals transmit money to ATULC on a per capita basis based on the number of dues paying members for each local unit.
- Mr. Iglitzin stated that ATULC does not qualify as a political committee under the “maker of expenditures” found in RCW 42.17A.005(41) which *“not only have made or expected to make expenditures in support of a candidate or election initiative, it must also have had as one of its primary purposes supporting election candidates or initiatives.”* He provided information in response to staffs request concerning ATULC expenditure activities for calendar years 2014, 2016, and 2018 and staff reviewed filing information covering 2014-2018.

Staff Analysis, Summary and late filed L-3 report:

- ATULC’s percentage of expenditures for monetary contributions to candidates and political committees was 35% in 2016, and 30% in 2018, respectively. Staff, however, noted that 33 of the 41 contributions made by ATULC in 2016 contributions were expenditures made on two dates: June 3, 2016 (21 contributions); and September 16, 2016 (11 contributions).
- Staff noted that more than 80% of the ATULC contributions made to candidates for public office in 2016 were made over the course of two days. In contrast, its lobbying and membership outreach and services were ongoing throughout the calendar year. Although ATULC made expenditures in support of candidates, the totality of the evidence does not suggest that ATULC is a political committee, because the making of those expenditures was not its primary purpose, or even one of its primary purposes.

- On January 31, 2018, ATULC filed the L-3 report for calendar year 2016 disclosing that Johnson Arledge Strategies, a contract lobbying firm, provided lobbying services during the 2016 Legislative Session and the remainder of calendar year 2016. The L-3 report disclosed that ATULC made payments totaling \$25,200 to Johnson Arledge Strategies as compensation for lobbying services.
- The L-3 report for calendar year 2016 was required to have been filed by ATULC no later than the last day of February 2017. While not listed as an allegation in the complaint filed against the ATULC, the L-3 report was filed 337 days late by ATULC on January 31, 2018.
- On April 2, 2020, ATULC completed a Statement of Understanding (SOU) and paid a \$150 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging a violation of RCW 42.17A.630 for failing to timely file the Annual Report of Lobbyist Employers (L-3 reports) for calendar year 2016.
- The \$150 penalty assessed and paid by ATULC in this matter resolves the issue of the late filed L-3 report for 2016.

III.

Scope

3.1 PDC staff reviewed the following documents:

- On December 11, 2018, a complaint with exhibits was filed by Maxford Nelson with the Freedom Foundation against the Amalgamated Transit Union Legislative Council of Washington State.
- On February 1, 2019, Mr. Nelson on behalf of the Freedom Foundation, submitted a supplemental letter in response to the letter submitted by Mr. Iglitzin.
- On April 15, 2019, Mr. Nelson on behalf of the Freedom Foundation submitted supplemental complaint information against the ATULC that included federal Department of Labor LM-3 reports filed for calendar years 2012 through 2018.
Exhibit #6.
- Annual Report of Lobbyist Employers (L-3 reports) and the Monthly Lobbyist Employer Contributions report (L-3c reports) filed by the Amalgamated Transit Union Legislative Council of Washington State.
- Responses and email exchanges between PDC staff and Dmitri Iglitzin, legal counsel with Schwerin Campbell Barnard Iglitzin & Lavitt LLP on behalf of Amalgamated Transit Union Legislative Council of Washington State.

3.2 PDC staff queried the PDC Contribution and Expenditure database for Amalgamated Transit Union Legislative Council of Washington State for contribution information covering calendar years 2014 through 2018.

IV.
Statutes and Rules

- 4.1 **RCW 42.17A.205** requires every entity and organization to register as political committee within two weeks after the organization or entity first has the expectation of receiving contributions or making expenditures in any election campaign.
- 4.2 **RCW 42.17A.235 and 240** requires political committees under the Full Reporting Option to file timely, accurate C-3 and C-4 reports disclosing contribution and expenditure activities undertaken by the committee. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.
- Beginning June 1st for every political committees participating in an election, C-4 reports are required 21 and 7 days before each election in which the committee receives contributions or makes expenditures, and in the month following the election. Monetary contributions are reported weekly during this same time and are required to be disclosed on a C-3 report filed every Monday for monetary contributions deposited into the committee bank account the previous five business days.
- 4.3 **RCW 42.17A.630** requires employers of a lobbyist to file an Annual Lobbyist Employer's Report (L-3 report) by the last day of February disclosing lobbying activities undertaken during the previous calendar year.
- 4.4 **PDC Interpretation 07-02, *Primary Purpose Test Guidelines*** for a Political Committee.

Respectfully submitted this 6th day of April 2020.

s/_____
Electronically Signed by Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** December 11, 2018, complaint filed by Maxford Nelson with the Freedom Foundation against the Amalgamated Transit Union Legislative Council of Washington State (ATULC). (Note – this exhibit only includes the complaint and letter without attached exhibits).
- Exhibit #2** January 31, 2019, supplementary complaint information provided by Freedom Foundation.
- Exhibit #3** January 19, 2019, initial response received from Dmitri Iglitzin, an attorney on behalf of ATULC.
- Exhibit #4** March 11, 2019, supplemental response received from Mr. Iglitzin on behalf of ATULC to PDC staff questions.
- Exhibit #5** March 15, 2019, additional information provided by Mr. Iglitzin on behalf of ATULC.
- Exhibit #6** April 15, 2019, letter from the Freedom Foundation providing supplemental complaint information against the ATULC.

Complaint Description
<p><u>Maxford Nelsen</u> reported an issue (Tue, 11 Dec 2018 at 5:28 PM)</p> <p>See attached.</p>
What impact does the alleged violation(s) have on the public?
See attached.
List of attached evidence or contact information where evidence may be found.
See attached.
List of potential witnesses with contact information to reach them.
See attached.
Complaint Certification:
I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

December 11, 2018

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

Public Disclosure Commission Staff,

Pursuant to RCW 42.17A.775, I write to report violations of the Fair Campaign Practices Act (“FCPA”), Chapter 42.17A RCW, by the Amalgamated Transit Union Legislative Council of Washington State (“ATULC”).¹

In brief, ATULC has operated as a political committee for years without filing a statement of organization with the Public Disclosure Commission (“PDC”) as required by RCW 42.17A.205. As an unregistered political committee, ATULC has also failed to comply with the other provisions of Chapter 42.17A RCW governing the conduct and reporting requirements of political committees.

ATULC not only describes its purpose in explicitly political terms, but it receives contributions from ATU locals around Washington with the understanding the funds will be used to advance electoral political activity. In election years, ATULC spending on political activity increases dramatically, to half or more of its total expenditures. ATULC has no full-time staff and, beyond what appear to be basic administrative costs, has little-to-no expenses other than political contributions. Accordingly, it satisfies both the “receiver of contributions” and “maker of expenditures” prongs of the definition of “political committee” as recognized by the courts and should be held to account for its lack of disclosure.

Factual background

Section 40.2 of the Amalgamated Transit Union (“ATU”) Constitution and General Laws allows local unions in a state to form a statewide entity for the purpose of coordinating political activity, providing:

“Where a majority of the LUs [local unions] in a state or province, with the approval of the IU [international union], enact to form a joint conference board for mutual aid and protection, exchange of information, the furthering of organizing and organizing campaigns, legislative and political action, and community action programs, in accordance with the charters or directions issued by the IU, then, in that event, all LUs within that state or province shall be obligated to affiliate and support the work of such

¹ 1308 Meador Ave C-1, Bellingham, WA 98229. (360) 738-3299. President: Randal Son, atulcpres@gmail.com. Vice president: Rick Swartz, atu883finsec@comcast.net. Secretary-treasurer: AJ Wolcott, atulc.fst@gmail.com

joint conference board. The conference board shall establish monthly per capita tax through the bylaws of such conference board as approved by the IP [international president].”²

See Appendix page 171.

The ATULC is such a “joint conference board” for ATU locals in Washington. Its website describes its purpose as follows:

“The Washington State Legislative Council exists under the authorization of the Amalgamated Transit Union International Constitution and General By-Laws.

To protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local Unions embodied within the State of Washington.

To promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State.

To cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered.

To encourage our memberships to be politically alert on matters that affect their livelihood, and create a more favorable public sentiment towards the Transportation Industry.”³

See App. 206.

The ATULC filed a form 8871, notice of Section 527 status, with the Internal Revenue Service (“IRS”) in 2007, claiming the tax benefits of a “political organization” under federal law. *See App. 207.* 26 U.S.C. § 527(e)(1) defines “political organization” as:

“...a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.”

“Exempt function” is defined by subsection (e)(2) as:

“...the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office...”

ATULC describes its purpose on its form 8871 as, “promot[ing] legislation and candidates

² A copy of the ATU Constitution is available online at: https://www.atu.org/atu-pdfs/CGL2016_FINAL.pdf

³ Available online at: http://www.atulcwa.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=510298

supportive for Amalgamated Transit Union member in the State of Washington” (errors in original). *See App. 207.*

According to financial disclosure forms LM-3 ATULC files with the U.S. Department of Labor’s Office of Labor Management Standards (“OLMS”) in accordance with the federal Labor Management Reporting and Disclosure Act of 1959, ATULC has no paid staff and is run by a board of unpaid volunteers comprised of union officials from ATU locals in Washington. *See App. 236.*

Its forms LM-3 divide ATULC’s annual expenditures into four categories: (1) Office and administrative expense⁴; (2) professional fees⁵; (3) contributions, gifts and grants⁶; and (4) other.⁷ *See App. 213, 217, 222, 227, 232, and 237.*

Year	Total Receipts	Total Disbursements	Office and Administrative Expense		Professional Fees		Contributions, gifts and grants		PDC Contributions		
			Amount	% of Disbursements	Amount	% of Disbursements	Amount	% of Disbursements	PDC Contributions	% of Disbursements	% of Receipts
2012	\$55,770	\$73,447	\$4,990	6.8%	\$2,000	2.7%	\$66,457	90.5%	\$61,265	83.4%	109.9%
2013	\$81,659	\$45,619	\$7,355	16.1%	\$3,014	6.6%	\$35,250	77.3%	\$12,000	26.3%	14.7%
2014	\$89,954	\$80,506	\$11,688	14.5%	\$32,224	40.0%	\$36,594	45.5%	\$24,650	30.6%	27.4%
2015	\$85,714	\$61,378	\$15,118	24.6%	\$35,860	58.4%	\$10,400	16.9%	\$4,900	8.0%	5.7%
2016	\$85,408	\$101,442	\$21,549	21.2%	\$29,410	29.0%	\$49,500	48.8%	\$43,050	42.4%	50.4%
2017	\$92,753	\$67,153	\$23,568	35.1%	\$33,885	50.5%	\$9,700	14.4%	\$3,950	5.9%	4.3%
Total	\$491,258	\$429,545	\$84,268	19.6%	\$136,393	31.8%	\$207,901	48.4%	\$149,815	34.9%	30.5%

Beyond the basic administrative costs necessary to exist, ATULC’s only expenditures are for “contributions, gifts and grants.” On average, this category accounts for half of ATULC’s expenditures, a proportion that consistently spikes during election years.

Most, if not all, of the expenditures in the “contributions, gifts and grants” category are for political contributions to candidates, ballot measures and political committees.

For instance, on its forms LM-3 for 2014 and 2015, ATULC itemized its political contributions under item 56, reporting \$29,150 in contributions in 2014 (out of \$36,594 total contributions, gifts and grants) and \$10,400 in 2013 (exactly the same as the amount of reported contributions, gifts and grants). *See App. 223 and 228.*

Tracking ATULC’s political expenditures in disclosures filed with the PDC is difficult. Since ATULC has not registered as a political committee, the only records of its expenditures are those filed by recipients of ATULC funds. Recipients use multiple different titles/labels to describe ATULC.

Records the Freedom Foundation has been able to identify appear to indicate that ATULC made political expenditures totaling at least \$61,265 in 2012, \$12,000 in 2013, \$24,650 in 2014,

⁴ See Statement B, item 48 of the forms LM-3.

⁵ See Statement B, item 49 of the forms LM-3.

⁶ See Statement B, item 51 of the forms LM-3.

⁷ See Statement B, item 54 of the forms LM-3. There are no expenses listed in this category for 2012-15 or 2017. There are \$983 worth of “other” expenses recorded on the 2016 form LM-3.

\$4,900 in 2015, \$43,050 in 2016, \$3,950 in 2017, and \$30,000 in 2018. *See App. 239-245.*

Violations of the FCPA

RCW 42.17A.205 requires every “political committee” to “file a statement of organization” with the PDC “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.005(40) defines “political committee” as:

“...any person... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”

Three Washington court decisions have clarified and interpreted this definition.

In *State of Washington v. Dan J. Evans Campaign Committee*, 86 Wn.2d 503 (1976), the State Supreme Court determined that an entity satisfies the expenditures prong of the definition of “political committee” if affecting, “directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions” is “the primary or one of the primary purposes” of the entity.

In *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398 (2015), the Washington State Supreme Court confirmed that an organization may be considered a “political committee” if *one* of its primary purposes is to engage in electoral political activity; electoral political activity need not be *the* primary purpose of the entity for it to fulfill the definition of “political committee.”

Lastly, in *State ex rel. Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. 586 (2002), the court of appeals interpreted the definition of “political committee” to mean,

“...a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.”

ATULC fulfills both the “receiver of contributions” and “maker of expenditures” prongs of the definition of “political committee.”

The per capita payments ATULC receives from ATU locals in Washington are contributions made in expectation of furthering electoral political goals. Because the bylaws of the national ATU requires ATU locals to pay per capita taxes to ATULC as a “joint conference board,” ATULC has an expectation of receiving and does receive the per capita payments to use as political contributions.

This alone is sufficient to qualify ATULC as a political committee under the “receiver of contributions” prong. However, ATULC also fulfills the “expenditures prong” of the definition

of “political committee.”

In *EFF v. WEA*, the appeals court expounded on the primary purpose test established by the State Supreme Court in *State of Washington v. Dan Evans*, including the following observations:

“...an appropriate framework for determining whether electoral political activity is one of an organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question. Under this analysis, a nonexclusive list of analytical tools a court may use when evaluating 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 and mission.”

ATULC repeatedly describes its own purpose as engaging in “political activity” and “promoting candidates.”

Additionally, the organization’s actions clearly line up with its stated goals. Indeed, an analysis of ATULC’s finances indicates that it performs no substantive function that is not political. Other than administrative expenses, ATULC appears to have few expenses other than the making of political contributions. With no staff and little other measurable activity to speak of, it does not appear that ATULC “uses means other than electoral political activity to achieve its stated [political] goals and mission.”

To be considered a “political committee” under the expenditures prong for the purposes of the FCPA, ATULC need only have as *one* of its primary purposes the influencing of electoral political activity. It meets this threshold without question.

Lastly, it is worth noting that, in a situation with almost identical facts, the Washington State Attorney General’s Office is currently prosecuting the SEIU Washington State Council for its failure to register and report to the PDC as a political committee.⁸ Like ATULC, the SEIU Washington State Council is an entity created under the national SEIU bylaws that collects a per capita tax from all SEIU locals in Washington for the purposes of engaging in and coordinating SEIU’s electoral political activity in Washington.

Conclusion

ATULC’s failure to register and report as a political committee as required by the FCPA has tangibly negative implications for the transparency of Washington elections. For example, political contributions made by ATULC are labeled differently by various recipients of ATULC funds, making it difficult to know the true source of the contributions and to track ATULC’s

⁸ Washington State Office of the Attorney General. “AGO files campaign finance complaint against SEIU Washington State Council.” July 11, 2017. <https://www.atg.wa.gov/news/news-releases/ago-files-campaign-finance-complaint-against-seiu-washington-state-council>

political activity.

Further, the reporting regime required by the law requires both the contributing political committee and the receiving political committee or candidate to report the transaction to the PDC. This dual reporting promotes transparency, as both the contributor and recipient would have to fail to report the transfer of funds for it to go unnoticed. ATULC's failure to properly register as a political committee thwarts this system of accountability. Since ATULC already does not report its contributions, the transfer of funds would be invisible to the public if only the recipients of ATULC funds neglected to report as required.

We respectfully request that the PDC perform an investigation into these allegations and take appropriate enforcement action. Please do not hesitate to contact me if I can be of assistance.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a stylized, sweeping flourish at the end.

Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

January 31, 2019

Tabatha Blacksmith
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: Case No. 43940

Ms. Blacksmith,

I have reviewed the Amalgamated Transit Union Legislative Council's ("ATULC") January 17, 2019 response to my citizen action complaint filed December 11, 2018 and would like to address several issues.

First, ATULC's response to the contention that it is a "political committee" under the "receiver of contributions" consists primarily of diversionary arguments designed to confuse the issue.

The first two paragraphs of the union's response discuss the criteria used by the Court of Appeals in *Evergreen Freedom Found. v. Washington Educ. Ass'n*, 111 Wn. App. 586, 602 (2002) to evaluate whether the Washington Education Association was a political committee. As noted by ATULC, the court held that, if an organization is funded by members, it is not a "political committee" unless "members' payments are segregated into a fund for political purposes and members know or should know about that segregation..."

That analysis would be relevant if the complaint alleged that a specific ATU local was itself a political committee because some of the funds it collects from its members were being set aside for political use.

However, beyond its discussion of the "receiver of contributions" and "maker of expenditures" prongs, *WEA* is inapplicable to the case at hand because, as ATULC admits, it "does not receive dues from union members at all." The form LM-3 ATULC filed with the U.S. Department of Labor for calendar year 2017 also indicated the union had zero members. *See original Appendix page 235.*

Instead, as pointed out in the original complaint and confirmed by the ATULC in its response, it is funded by per capita payments made by ATU local unions in Washington. Accordingly, the question is whether the leadership, not the membership, of these local unions is aware the payments their local unions make to ATULC are for political expenditures.

ATULC president Roy Jennings is also "a member of the Executive Board of the Amalgamated

Transit Union Local 757” in Portland.¹ ATULC vice president Richard “Rick” Swartz is also secretary-treasurer for ATU Local 883 in Everett.² And ATULC secretary-treasurer Albert Walcott is also the president of ATU Local 843 in Bellingham.³

Given that each of ATULC’s officers are also officials for ATU locals in Washington, it is inconceivable that they and their unions are unaware that the funds paid to ATULC are intended for electoral political activity.

Even ATULC effectively concedes that ATU locals know some of the money paid to ATULC will be used for political expenditures, contending instead, “There is no way that ATU locals can know in advance *what proportion* of the per capita payments they provide to ATULC will be spent by ATULC on electoral political activity.” (Emphasis added)

But ATU locals undoubtedly know, given their involvement with ATULC and its mission to engage in political activity, that a substantial portion — if not a majority — of the funds they direct to ATULC will be used on electoral political activity. They need not know in advance the exact proportion that will be used for political expenditures. The fact that ATU bylaws require ATU locals to transfer the funds to ATULC means it has an expectation of receiving and does receive contributions from ATU locals for electoral political activity and, accordingly, it satisfies the definition of “political committee” under the “receiver of contributions” prong.

Second, ATULC contends it is not a political committee under the “maker of expenditures prong” because “electoral political activity is not one of ATULC’s primary purposes.” Here again, ATULC’s response misconstrues the original complaint and tries to redefine its previously stated purpose in nonpolitical terms in an attempt to muddy the waters.

In its response, ATULC describes its mission and purpose in the following ways:

- “[F]urthering ATU locals’ members’ interests through legislation, cooperation, and coalition building throughout the transportation industry.”
- “[F]unctioning as a forum for Washington State ATU locals and providing educational training for those locals and their members, as well as to support substantial lobbying efforts at ATULC’s expense.”

Such creative revisions of ATULC’s previously stated purposes smack of desperation.

As noted in the original complaint and entirely ignored by ATULC in its response, ATULC has informed the IRS that its purpose is to “promote legislation and candidates supportive for Amalgamated Transit Union member in the State of Washington.” *See* original **App. 207**.

And the stated mission of the ATULC posted on its website — to engage in “political activity,” “promote and support new legislation,” “form a stronger political bond of cohesion” with other unions, and encourage ATU members to “be politically alert,” in that order — speaks for itself,

¹ <http://wstc.wa.gov/AboutUs/Commissioners/default.htm>

² <https://www.atu.org/members/groups/conferences-and-councils>

³ Albert Walcott Jr., President/Business Agent

despite the union's present attempt at revisionist history.

In light of such clarity, ATULC's accusation that the original complaint "twists" and "misrepresents" its stated purpose with "wholly concocted language" is just plain wrong.

ATULC emphasizes heavily in its response that lobbying is *one* of its primary purposes. That may be the case; its mission statements clearly suggest as much. But equally clear is that electoral political activity is its *other* primary purpose.

Just existing involves a certain baseline level of administrative expenses. As a small organization, these administrative expenses constitute a respectable percentage of ATULC's overall budget. But since merely existing as a legal entity is not a primary purpose, we must examine the rest of ATULC's expenses to determine its purpose(s). During election years, political expenditures can constitute half or more of ATULC's receipts/expenditures. Presumably, if ATULC's claims are correct, much of the rest goes towards lobbying activities.

Based on these numbers — which ATULC has not contested — there is simply no disputing that electoral political activity constitutes one of ATULC's two primary purposes. That is more than sufficient to qualify it as a political committee.

ATULC even admits that, "in some years ATULC *did* spend a substantial amount of money in support of or in opposition to candidates and ballot measures." Citing *WEA*, however, ATULC claims it only made such expenditures "to achieve its legitimate broad nonpolitical goals, and its admission that it engages in such activity to that end does not make that activity one of its primary purposes."

Yet the court in *WEA* also noted, "If the activities of an organization reveal that a majority of its efforts are put toward electoral political activity, the fact finder may disregard the organization's stated goals to the contrary." In 2016, over half of the funds (at least) received by ATULC were expended on electoral political activity.

At any rate, in this case, both ATULC's stated goals and actions are in alignment: It proclaims electoral political activity to be one of its primary purposes and expends its funds accordingly. The only conclusion that can be reached is that ATULC is an unregistered political committee.

Sincerely,



Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

*Via U.S. Mail
And via email to pdcc@pdcc.wa.gov*

January 17, 2019

Peter Lavallee
Executive Director
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Complaint from The Freedom Foundation
PDC Case No. 43940
BIL File No. 3327-002

Dear Mr. Lavallee:

We write to you on behalf of our client, the Amalgamated Transit Union Legislative Council of Washington State ("ATULC"), in response to the e-mail we received from you on December 13, 2018, regarding a 45-day Citizen Action Letter filed by The Freedom Foundation ("Freedom Foundation") with the Washington Attorney General's Office on December 11, 2018 ("Complaint").

Respectfully, we believe the allegations made by Freedom Foundation are without merit. As noted in its complaint, under RCW 42.17A.005(41), "'Political committee' means any person . . . having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." Elaborating on that definition, the state Supreme Court has noted that "the legislature provided a skeletal outline of the salient characteristics of a political committee. The definition, though, was not drafted to ensnare indiscriminately all persons seeking to influence governmental decision-making by their contributions given in support of or opposition to candidates or ballot propositions." *State v. 1972 Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508 (1976).

Taking into account the statutory definition prescribed by the state legislature and the applicable case law, ATULC is not an unregistered political committee under either the "receiver of contributions" or "maker of expenditures" prongs of the statute. Accordingly, it has not violated any of the reporting requirements that otherwise would have been applicable to it.

ATULC is not an unregistered political committee under the “receiver of contributions” prong.

ATULC does not qualify as an unregistered political committee under the “receiver of contributions” prong of RCW 42.17A.005(41). In interpreting RCW 42.17.010(33) (since recodified as RCW 42.17A.005(41)), the Court of Appeals affirmed the trial court’s adoption of a 1973 Attorney General Letter Opinion noting that, “[w]hen an organization is funded primarily by membership dues, it is a ‘receiver of 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 purpose.” *Evergreen Freedom Found. v. Washington Educ. Ass’n*, 111 Wn. App. 586, 602 (2002) (“*WEA*”), (quoting 1973 Lett. Op. Att’y Gen. No 114, at 4). In that letter opinion, the Attorney General stated that “if the only source of revenue of [an] organization is use or assessments to fund general operations, and the membership has no actual or constructive knowledge that the organization is setting aside funds to support or oppose a ballot proposition, then the organization is not a political committee under the ‘receiver of contributions’ prong.” *WEA*, 111 Wn. App. at 602.

However, if members’ payments are segregated into a fund for political purposes and members know or should know about that segregation, those payments are contributions, qualifying the organization as a receiver of contributions and a political committee. *Id.* at 602-03. Applying that reasoning, the *WEA* found that the WEA was not a receiver of contributions, because members paid dues into a general fund which was not segregated in any manner for political expenditures; accordingly, the members had no actual or constructive knowledge that their dues would be used for electoral political activity. The dues, therefore, were not contributions, and WEA did not qualify as a political committee under the receiver of contributions prong. *Id.* at 603.

Here, ATULC does not receive dues from union members at all. Instead, it receives dues from Amalgamated Transit Union locals. The locals transmit money to ATULC from the moneys they receive from their members. Individual union members’ dues payments are *not* segregated into a fund for political purposes even at the local level, much less by ATULC. Instead, the locals transmit money to ATULC on a per capita basis based on the number of dues-paying members each local has.

The Freedom Foundation’s argument that these per capita payments to ATULC from ATU locals none-the-less qualify as contributions lacks merit. There is no way that ATU locals can know in advance what proportion of the per capita payments they provide to ATULC will be spent by ATULC on electoral political activity. Much less could any members of those locals have any idea what that proportion might be. All money received by ATULC is spent as ATULC deems appropriate, after due consideration, in pursuit of ATULC’s goal of furthering ATU locals’ members’ interests through legislation, cooperation, and coalition building throughout the transportation industry. None of the money it receives is earmarked at the time of receipt for any particular use. Accordingly, Freedom Foundation’s assertion that ATULC is a receiver of contributions under RCW 42.17A.005(41) is without merit.

ATULC is not an unregistered political committee under the “maker of expenditures” prong.

ATULC also does not qualify under the “maker of expenditures” prong of RCW 42.17A.005(41). To qualify as a political committee under the expenditure prong an organization must not only have made or expected to make expenditures in support of a candidate or election initiative, it must also have had as one of its primary purposes supporting election candidates or initiatives. *Utter v. Bldg. Indus. Ass’n. of Washington*, 182 Wn.2d 398, 419 (2015). While ATULC has made some expenditures in support of candidates or election initiatives, electoral political activity is not one of ATULC’s primary purposes. Instead, ATULC devotes its efforts to functioning as a forum for Washington State ATU locals and providing educational training for those locals and their members, as well as to support substantial lobbying efforts at ATULC’s expense.

When the primary purpose or one of the primary purposes of a person making a contribution is to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions, that person becomes a political committee and is subject to disclosure requirements under Washington law. 1972 *Dan J. Evans Campaign Comm.*, 86 Wn.2d at 509. Put another way, an organization is not considered a political committee under the expenditure prong “unless it also has the support of a political candidate or initiative as the primary [purpose] or one of the primary purposes.” *Utter*, 182 Wn.2d at 415. In contrast, “if electoral political activity is merely *one* means the organization uses to achieve its legitimate broad nonpolitical goals,” the organization does not qualify under the expenditure prong because “electoral political activity cannot be said to be one of the organization’s primary purposes.” *WEA*, 111 Wn. App. at 600 (emphasis added).

An assessment of whether electoral activity is one of an organization’s primary goals looks to, among other things, the stated goals and mission of the organization, whether the organization’s actions further its stated goals and mission, whether the stated goals and mission would be substantially achieved by a favorable outcome in an upcoming election, and whether the organization uses means other than electoral activity to achieve those goals. *Id.* at 599-600.

The stated goals of ATULC, its actions to further those goals, the impact of a favorable election on those goals, and the means which ATULC uses to achieve those goals all establish that the organization does not qualify as a political committee under the expenditures prong.

As noted both on ATULC’s website and in Freedom Foundation’s own complaint, ATULC explains that its purposes are:

To protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local unions embodied within the State of Washington.

To promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State.

To cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered.

To encourage our memberships to be politically alert on matters that affect their livelihood, and create a more favorable public sentiment towards the Transportation Industry.

Our Purpose, Amalgamated Transit Union Legislative Council (January 14, 2019, 5:11 PM), http://www.atulcwa.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=510298.

Though ATULC does not hide that its purposes include supporting legislation through lobbying efforts, which is in fact what it spends the bulk of its money on, it does *not* state that participating in elections through support or opposition of either candidates or ballot measures is one of its primary purposes. Though Freedom Foundation alleges that “ATULC repeatedly describes its own purpose as ‘engaging in political activity’ and ‘promoting candidates,’” it either twists ATULC’s purpose statement so far as to misrepresent it or wholly concocts language to suit its purposes. The phrase “engaging in political activity” and “promoting candidates” do not appear in ATULC’s mission statement. Supporting legislation through direct lobbying of elected officials is *not* the same as promoting (or opposing) candidates or ballot measures.

Likewise, ATULC’s actions serve to further its stated goals and mission, and the portion of its expenditures dedicated to electoral political activity reflect that political activity in and of itself is not one ATULC’s primary purposes. Even adopting the figures Freedom Foundation asserts in its complaint, analysis of ATULC’s average spending indicates only 22.6% of its expenditures over the past five years has been dedicated to electoral political activity. In contrast, it spent just shy of that – 22.3% of its expenditures over five years – on office and administrative expenses alone. That ATULC spent roughly the same amount of money supporting (or opposing) candidates and ballot initiatives as it does on overhead militates against the conclusion that the former is one of ATULC’s primary purposes.

Nor does the fact that in some years ATULC *did* spend a substantial amount of money in support of or in opposition to candidates and ballot measures justify a different conclusion. As in *WEA*, ATULC engages in electoral political activity to achieve its legitimate broad nonpolitical goals, and its admission that it engages in such activity to that end does not make that activity one of its primary purposes. *WEA*, 111 Wn. App. at 600. No evidence has been suggested, for example, indicating that favorable candidate or ballot measure election results would substantially further ATULC’s goals, much less render further activity by ATULC unnecessary; the absence of such evidence confirms that there is no basis on which to conclude that obtaining such election results is one of ATULC’s primary purposes.

Conclusion

For the foregoing reasons, ATULC is not an unregistered political committee under either

Peter Lavallee
January 17, 2019
Page 5 of 5

the receiver of contributions prong or maker of expenditures prong of RCW 42.17A.005(41). Accordingly, Freedom Foundation's complaint is without merit.

If you have any questions or concerns please feel free to contact me at 206-257-6003 or via e-mail at iglitzin@workerlaw.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dmitri Iglitzin".

Dmitri Iglitzin
*Counsel for Amalgamated Transit Union
Legislative Council*

cc: Randal Son, ATULC



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*Via U.S. Mail
And via email to kurt.young@pdc.wa.gov*

March 11, 2019

Kurt Young
Compliance Officer
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

RECEIVED

MAR 13 2019

Public Disclosure Commission

Re: Complaint from the Freedom Foundation
PDC Case No. 43940
BIL File No. 3327-002

Dear Mr. Young:

We write to you on behalf of our client, the Amalgamated Transit Union Legislative Council of Washington State ("ATULC"), in response to your February 26, 2019, letter regarding the Freedom Foundation's complaint against our client.

ATULC has compiled information in response to your request for further information regarding the years 2014 to 2018.

- ***What were ATULC's annual total receipts and expenditures?***
 - In 2014, ATULC's receipts totaled \$89,954.51 and its expenditures totaled \$80,507.30.
 - In 2015, ATULC's receipts totaled \$85,714.84 and its expenditures totaled \$61,369.03.
 - In 2016, ATULC's receipts totaled \$85,409.73 and its expenditures totaled \$101,443.04.
 - In 2017, ATULC's receipts totaled \$92,973.32 and its expenditures totaled \$67,153.61.
 - In 2018, ATULC's receipts totaled \$82,226.81 and its expenditures totaled \$104,227.26.

We need to note again here, however, that the Freedom Foundation's focus on the relationship between electoral political expenditures in a given year and the spending entity's total receipts that year is conceptually misguided. Instead, ATULC's political expenditures must be viewed in relation to, and in the context of, ATULC's *overall expenditures*.

In its complaint, Freedom Foundation appears to allege that an organization's purpose may be established as political by comparing its annual receipts to its expenditures on electoral political activity. However, such a standard would be both over- and under-inclusive.

First, this standard would lead to the misclassification of organizations that, in a given year, make expenditures *predominately* on electoral political activity, where those expenditures happen to represent only a modest fraction of the organization's receipts that year. That would clearly be a legal error.

Second, such a standard could lead to the conclusion that an organization, like ATULC, that happens to have a big year on the expenditure side relative to its receipts, has a primary purpose of electoral political activity, even if its expenditures for electoral political activity fall well below a majority of its total expenditures during that calendar year (or campaign season), merely because those expenditures are large relative to the organization's receipts.

The appropriate standard, in contrast, and the one that should be applied here, compares an organization's overall expenditures during the relevant time period to the expenditures it has made for electoral political activity. Applying that standard here, as we noted previously, it is clear that between 2014 and 2018 ATULC expended far less than a majority of its efforts on electoral political activity and such activity was not one of its primary purposes. Whether money expended on all of these activities was raised in one year or another is simply irrelevant to this analysis.

- ***What were the amounts of expenditures by category, using the same categories used by Mr. Nelson on Page 3 of his complaint?***
 - In 2014, ATULC spent \$11,380.27 on office and administrative expenses; \$32,224 on professional fees; \$36,594 on contributions, gifts, and grants; and \$308.53 on other expenses.
 - In 2015, ATULC spent \$14,648.05 on office and administrative expenses; \$35,860 on professional fees; \$10,400 on contributions, gifts, and grants; and \$234.32 on other expenses.
 - In 2016, ATULC spent \$21,117.62 on office and administrative expenses; \$29,410.38 on professional fees; \$49,500 on contributions, gifts, and grants; and \$432.14 on other expenses.
 - In 2017, ATULC spent \$22,976.58 on office and administrative expenses; \$33,885.40 on professional fees; \$9,700 on contributions, gifts, and grants; and \$449.96 on other expenses.
 - In 2018, ATULC spent \$25,514.88 on office and administrative expenses; \$42,282.92 on professional fees; \$34,900 on contributions, gifts, and grants; and \$1,579.46 on other expenses.

Please note, however, that the ATULC's definition of "contributions, gifts, and grants" is in no way coextensive with the FCPA's definition of electoral political activity. Thus, the sums set forth above as having been spent on "contributions, gifts, and grants" are much larger than

the amount of money ATULC spent on electoral political activity and should not be misunderstood as representing that sum.

- ***What were ATULC's PDC contributions supporting or opposing a candidate, ballot proposition, or political committee, including but not limited to expenditures for political committee fundraising and electioneering communications as defined by RCW 42.17A.005(22)(a)?***

ATULC, not being a political committee, and being a totally volunteer-run organization, has not had any reason to retain separate records relating to its contributions supporting or opposing candidates or ballot measures or to political committees, as opposed to the other charitable expenditures it has made and other organizations (not political committees) that it has supported (i.e., all of its other "contributions, gifts, and grants"). However, we can tell you that ATULC has not separately fundraised or engaged in electioneering communications as defined by RCW 42.17A.005(22)(a). The best accounting of ATULC's "PDC contributions," as defined above, will be found in the PDC's database, as all of those contributions would have been reported by the recipients.

- ***What were ATULC's expenditures made to or in support of employees, directors, leaders, or contractors, including lobbyists, for work related to candidate, ballot proposition, or political committee support or opposition?***

The best record of what ATULC spent on lobbyists will be found in ATULC's L-3 reports, and in the monthly L-2 reports filed by our lobbyist(s), all of which the PDC has in its possession. Without having reviewed those forms in detail, however, ATULC believes that none of that lobbying related to candidates, ballot propositions, or political committee support or opposition.

Regarding financial support of persons *other* than lobbyists, ATULC does not believe that it made any expenditures to support work related to candidates, ballot propositions, or political committee support or opposition.

- ***What were ATULC's PDC expenditures for anyone who lobbied for ATULC?***

The best record of what ATULC spent on lobbyists will be found in ATULC's L-3 reports, and in the monthly L-2 reports filed by our lobbyist(s), all of which the PDC has in its possession.

Finally, ATULC has timely submitted annual L-3 reports and, where necessary, timely filed L-3c reports, as an employer of lobbyists, reporting to the PDC all of the contributions to political committees that a lobbyist employer is required to report.

Kurt Young
March 11, 2019
Page 4 of 4

If you have any questions or concerns regarding this matter, please feel free to contact me at 206-257-6003 or via e-mail at iglitzin@workerlaw.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dmitri Iglitzin".

Dmitri Iglitzin
*Counsel for Amalgamated Transit Union
Legislative Council*

cc: Randal Son, ATULC



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RECEIVED

MAR 18 2019

Public Disclosure Commission

Via U.S. Mail
And via email to kurt.young@pdc.wa.gov

March 15, 2019

Kurt Young
Compliance Officer
Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: Complaint from the Freedom Foundation
PDC Case No. 43940
BIL File No. 3327-002

Dear Kurt:

Per your request, I have taken a look at ATULC's own records and have determined what portion of the amount it spent on "contributions, gifts, and grants" (as previously described to you) actually went to PDC contributions, i.e., to support or oppose candidates or ballot measures.

Based on our research, we can now advise you as follows:

- In 2014, ATULC had total expenditures of \$80,507.30, of which \$18,745.00, or 23%, was spent on PDC contributions.
- In 2016, ATULC had total expenditures of \$101,443.04, of which \$35,451.10, or 35%, was spent on PDC contributions.
- In 2018, ATULC had total expenditures of \$104,227.26, of which \$31,367.00, or 30%, was spent on PDC contributions.

If you have any further questions regarding this, please let me know.

Sincerely,


Dmitri Iglitzin
Counsel for ATULC

cc: Randal Son, ATULC

workerlaw.com

April 15, 2019

Kurt Young
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: Case No. 43940

Mr. Young,

Additional information has come to my attention that is relevant to the Public Disclosure Commission's ("PDC") ongoing investigation into the alleged violations of the Fair Campaign Practices Act ("FCPA") by the Amalgamated Transit Union Legislative Council ("ATULC").

As you know, my original complaint examined ATULC's political activity from 2012 through 2017 and contended that it should have registered with the PDC as a political committee. However, reports recently made publicly available suggest ATULC continued to function as an unregistered political committee throughout calendar year 2018.

As discussed in the original complaint, ATULC is required by the Labor Management Reporting and Disclosure Act of 1959 to annually file financial disclosure forms LM-3 with the U.S. Department of Labor's Office of Labor Management Standards ("OLMS"). ATULC's form LM-3 for calendar year 2018 was recently filed with OLMS. **See Appendix pages 2-6.**

ATULC's forms LM-3 generally divide its annual expenditures into four categories: (1) Office and administrative expense¹; (2) professional fees²; (3) contributions, gifts and grants³; and (4) other.⁴ ATULC recorded paying its officers and staff for the first time on its 2018 LM-3.⁵ For the purposes of the chart below, the amount paid to ATULC's officers is included as part of "office and administrative expenses."

The LM-3 indicated ATULC had total revenue of \$82,245 and made \$104,295 in disbursements in 2018. Over the same period, C3 and C4 reports filed with the PDC by recipients of ATULC contributions indicate it made at least \$30,250 in reportable political expenditures in 2018. **See App. 7.** Thus, *at least* 29% of ATULC's disbursements and 36.8% of its revenue went towards reportable political expenditures in 2018.

¹ See Statement B, item 48 of the forms LM-3.

² See Statement B, item 49 of the forms LM-3.

³ See Statement B, item 51 of the forms LM-3.

⁴ See Statement B, item 54 of the forms LM-3.

⁵ See Statement B, item 45 of the forms LM-3.

Year	Total Receipts	Total Disbursements	Office and Administrative Expense		Professional Fees		Contributions, gifts and grants		PDC Contributions		
			Amount	% of Disbursements	Amount	% of Disbursements	Amount	% of Disbursements	PDC Contributions	% of Disbursements	% of Receipts
2012	\$55,770	\$73,447	\$4,990	6.8%	\$2,000	2.7%	\$66,457	90.5%	\$61,265	83.4%	109.9%
2013	\$81,659	\$45,619	\$7,355	16.1%	\$3,014	6.6%	\$35,250	77.3%	\$12,000	26.3%	14.7%
2014	\$89,954	\$80,506	\$11,688	14.5%	\$32,224	40.0%	\$36,594	45.5%	\$24,650	30.6%	27.4%
2015	\$85,714	\$61,378	\$15,118	24.6%	\$35,860	58.4%	\$10,400	16.9%	\$4,900	8.0%	5.7%
2016	\$85,408	\$101,442	\$21,549	21.2%	\$29,410	29.0%	\$49,500	48.8%	\$43,050	42.4%	50.4%
2017	\$92,753	\$67,153	\$23,568	35.1%	\$33,885	50.5%	\$9,700	14.4%	\$3,950	5.9%	4.3%
2018	\$82,245	\$104,295	\$27,113	26.0%	\$42,282	40.5%	\$34,900	33.5%	\$30,250	29.0%	36.8%
Total	\$573,503	\$533,840	\$111,381	20.9%	\$178,675	33.5%	\$242,801	45.5%	\$180,065	33.7%	31.4%

The amount spent by ATULC on reportable political activity in 2018 is sufficient to establish that electoral political activity continues to be one of its primary purposes, lobbying being the only other noteworthy purpose as reflected both by the union's own description of its mission and its actual expenditures.

I hope this information proves useful to your investigation. 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,



Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

EXHIBIT F

April 16, 2020

Peter Lavallee, Executive Director
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: PDC Case No. 43940

Mr. Lavallee,

I recently received the Public Disclosure Commission's (PDC) complaint return letter¹ and report of investigation² dismissing the Freedom Foundation's December 11, 2018 complaint alleging the Amalgamated Transit Union of Washington Legislative Council (ATULC) violated the Fair Campaign Practices Act (FCPA) by failing to register and report as a political committee.

After reviewing these documents, the Freedom Foundation has concluded that the PDC's assessment of the facts in Case No. 43940 was inaccurate, its conclusions legally flawed, and its dismissal of the complaint arbitrary and capricious. The following is a non-exhaustive list of concerns and errors we have identified in the PDC's resolution of the complaint.

1. The PDC ignored ATULC's own statements about its primary purposes.

In the complaint, the Freedom Foundation documented that the ATULC describes political activity as one of its primary purposes. Specifically, the ATULC filed a Form 8871 with the Internal Revenue Service claiming status as a "political organization" under 26 USC § 527 and describing its purpose as "[promoting] legislation and candidates" favorable to ATULC. Neither ATULC nor PDC staff addressed or even acknowledged this fact.

ATULC claimed the description of its purposes on its website — three of which are explicitly political, with "lobbying" being the fourth — did not suggest that political activity was even *a* primary purpose of the ATULC. Incomprehensibly, the PDC apparently agreed.

2. The PDC undercounted the amount of ATULC's reportable political expenditures.

Citing PDC filings in which political candidates and committees reported receiving funds

¹ Available online at: <https://go.aws/2V6Xn3i>

² Available online at: <https://go.aws/3emnQBv>

from the ATULC, the Freedom Foundation's complaint alleged that ATULC made \$24,650 in political expenditures in calendar year 2014, comprising 31 percent of its total annual expenditures. However, the ATULC told the PDC — without any supporting documentation — that it spent only \$18,745 on reportable expenditures, or 23 percent of its 2014 expenditures.³

PDC staff apparently accepted ATULC's representation without question, disregarding the reports in the PDC's own database showing the union expended substantially more on political activity than it claimed.⁴

Similarly, ATULC claimed without documentation that it spent only \$35,451, or 35 percent, of its total annual budget on reportable expenditures in calendar year 2016. The Freedom Foundation's complaint, however, cited PDC reports filed by recipients of ATULC contributions indicating that \$43,050, or 42 percent, of the union's total 2016 expenditures went toward reportable political activity.

3. The PDC did not explain why ATULC is not a political committee despite spending more than 20 or 30 percent of its budget on reportable political activity.

Under WAC 390-16-049, an out-of-state political committee becomes a regular political committee with full reporting obligations if, at any point during a calendar year, more than 20 percent of its aggregate expenditures are for electoral political activity in Washington. Even counting only the incomplete expenditures claimed by ATULC and accepted by the PDC, the ATULC exceeded this threshold in 2014, 2016 and 2018.

Recently proposed, but not yet adopted, revisions to PDC interpretation 07-02 would implement a guiding threshold of 30 percent of an organization's expenditures when determining whether a primary purpose of an entity is electoral political activity.⁵ Again, even relying on the underestimates of ATULC political expenditures, the union exceeded this threshold in 2016 and 2018.

The ATULC contended, and the PDC appeared to accept, that lobbying is the primary purpose of the union, claiming a "majority" of its expenditures are for this purpose. But in 2016, for instance, ATULC admitted making \$35,451 in expenditures to candidates and political committees (the Freedom Foundation's complaint documented at least \$43,050 in such expenditures, or 42 percent of its annual expenditures) and spent only \$25,200 lobbying.

³ ATULC's first response to the PDC regarding the amount of its reportable political expenditures in its letter of March 11, 2019, was that, "The best accounting of ATULC's 'PDC contributions,' as defined above, will be found in the PDC's database, as all of those contributions would have been reported by the recipients." This is precisely the method the Freedom Foundation used to document ATULC's political expenditures in its original complaint.

⁴ After reviewing ATULC's L3c reports referenced in the PDC's report of investigation, the Freedom Foundation identified thousands of dollars in additional political expenditures not documented in the original complaint because they were not disclosed by the recipients. Including these transactions brings ATULC's total annual political expenditures to \$45,550 for 2016 and \$32,150 for 2018, accounting for 45 and 31 percent of its total annual expenditures, respectively.

⁵ The Freedom Foundation believes this threshold is too high, as it explained in recent comments to the PDC.

In light of the foregoing facts, it is utterly mystifying that the PDC can recognize lobbying as a primary purpose of the ATULC but find that electoral political activity is *not* a primary purpose of the union — at least during most election years.

Since the PDC consolidated control over FCPA enforcement in 2018, the Freedom Foundation has gone to great lengths to engage with the PDC in good faith. The complaints we file are consistently substantive and well-documented, and involve the most egregious kinds of FCPA violations, such as failure to disclose substantial sums in political contributions and expenditures, improper use of public facilities for political purposes, and illegal deduction of political contributions from employees' wages. When we come across additional information relevant to a complaint we've filed, we provide it to the PDC even if it is unfavorable to our original allegations. When the PDC has erred in handling one of our complaints, we outline the problems and provide the PDC an opportunity to correct them. While we do not hesitate to pursue legal action against the PDC when necessary, this course of action is reserved as a last resort.

It is in that same spirit of good faith that we again bring our concerns to your attention and request that the commission reconsider its dismissal of this complaint. However, should the PDC fail to promptly remedy the improper resolution of Case No. 43940, we will have no choice but to take additional actions to ensure that the FCPA is consistently and appropriately enforced.

Please do not hesitate to contact me for additional information about the concerns set forth herein, or if you wish to discuss the matter further.

Respectfully,



Maxford Nelsen
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EXHIBIT G



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Maxford Nelsen
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Freedom Foundation
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May 1, 2020

Dear Mr. Nelsen:

This letter responds to your letter dated April 16, 2020 regarding [PDC Case No. 43940](#), in which you expressed concerns about staff's resolution of the case. As a reminder, neither the complainant nor any other person has standing to participate or intervene in any investigation or consideration of a complaint by staff. [WAC 390-37-030](#). Nevertheless, staff provides this response as a courtesy to you.

As you know, staff disposed of this matter by having ATULC complete a [Statement of Understanding \(SOU\)](#) and paying a \$150 penalty acknowledging a violation of [RCW 42.17A.630](#) for failing to timely file the Annual Report of Lobbyist Employers (L-3) for the calendar year 2016. Staff did not, however, conclude that ATULC violated [RCW 42.17A](#) by failing to register as a political committee. After reviewing the information provided in your April 16th letter, staff did not find a basis to disturb the resolution of [PDC Case No. 43940](#).

Separate from the disposition of this particular matter, staff appreciate the information you have shared about ATULC's activities and seeks to ensure all legally required information has been disclosed to the PDC.

Thank you for your letter, as well as your continued efforts to work cooperatively and professionally with the PDC.

Regards,

/s/
Sean Flynn
General Counsel

cc: Peter Lavalley, Executive Director