BARNARD IGLITZIN & LAVITT LLP

18 West Mercer Street, Suite 400
Seattle, WA 98119
TEL (800) 238.4231
FAX (206) 378.4132

Dmitri Iglitzin
Senior Partner
DIR (206) 257.6003
Iglitzin@workerlaw.com

Sent via email to pdc@pdc.wa.gov

November 7, 2019

Tabitha Townsend, Compliance Coordinator
Public Disclosure Commission
711 Capitol Way S. #206
PO BOX 40908
Olympia, WA 98504-0908

Re: Seattle Fire Fighters Union, Local 27 Voluntary Political Action Committee (PAC)
PDC Enforcement Case No. 59238
BIL File No. 4550-003

Dear Ms. Townsend:

I write on behalf of the Seattle Fire Fighters Union, Local 27 Voluntary Political Action Committee (PAC) in response to Glen Morgan's October 24, 2019 complaint. This complaint should be dismissed because it is premised on a law which is unconstitutional as applied under the reasoning set forth in *Family PAC v. McKenna*, 685 F.3d 800 (9th Cir. 2012) and the contribution in question had no impact on the PAC's spending in this period.

Under the rationale set forth by the Ninth Circuit in *Family PAC v. McKenna*, RCW 42.17A.420(1) is unconstitutional as applied. In *Family PAC*, the Ninth Circuit determined that this provision of Washington campaign finance law was unconstitutional as applied to ballot initiatives. 685 F.3d at 813-14. Contribution limits are "constitutionally valid 'if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.'" *Id.* at 811 (quoting *Buckley v. Valeo*, 424 U.S. 1, 25 (1976)). The Court found that this law imposed a "significant burden on First Amendment rights," and while Washington's temporal restriction is less burdensome than the restriction at issue than the limit invalidated by the Supreme Court in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981), nonetheless "Washington's limit imposes a significant burden." *Id.* at 812 (noting that this three-week period is "critical" because "political committees may want to respond to developing events"). The Court found that Washington's limitation was not necessary to inform voters in the run-up to an election where the state had a system in place for special reporting periods. *Id.* at 813 n. 14. Thus, the Ninth Circuit came to the conclusion that the State's $5,000 contribution limit in the 21 days before an election was "not closely drawn" enough to match the State's informational interest. *Id.* at 813-14.

The only difference between the application of the law at issue in *Family PAC* and RCW 42.17A.420(1) as applied here is that the Ninth Circuit analyzed it as applied to ballot initiative PACs

and not candidate PACs. However, the Ninth Circuit analysis did not depend on the fact that it was a ballot initiative PAC being analyzed. Thus, the *Family PAC* Court's analysis applies equally to the situation here, and RCW 42.17A.420(1) is similarly unconstitutional as applied to candidate PACs.

Moreover, even if the PDC were to decide that this law is constitutional as applied to candidate PACs, the complaint should be dismissed with no more than a reminder letter sent to the PAC because the contribution in question had no impact on the PAC's ability to make expenditures in the 21 days preceding the 2017 general election. Prior to October 17, 2017 when the 21-day period began, the PAC had $16,180.03 in cash on hand, but the PAC only spent $2,250 during the 21-day period preceding the election. *See* Seattle Fire Fighters Union, Local 27 Voluntary Political Action committee's September 2017 C-4, October 2017 C-4, and November 2017 C-4. The PAC also received $3,620 in the 21-day lockout period. As a result, even if the PAC had not received the $25,000 contribution, the PAC would have had sufficient funds to make the expenditures it made in the 21 days preceding the election. Because the $25,000 contribution did not impact the PAC's actions in the 21-day period before the 2017 general election, the complaint should be dismissed.

Sincerely,

Dmitri Iglitzin
Counsel for Seattle Fire Fighters Union, Local 27 Voluntary Political Action Committee

cc: Dennis Karl