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Phil Stutzman
Compliance Office
Washington Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: PDC Case No. 141529
BIL No.: 3450*008-001

Dear Mr. Stutzman,

We are writing on behalf of Washington Education Association PAC (WEA PAC or Committee) to respond to the allegations raised by Glen Morgan in his August 20, 2023, and September 17, 2023, complaints. These complaints, now consolidated, are the second and third filed by Mr. Morgan against WEA PAC this year, and two of just under 100 complaints he has lodged against progressive candidates and committees in 2023 alone. Mr. Morgan's August 20 complaint against WEA PAC contains allegations of late reporting in violation of RCW 42.17A.235 and .240. Mr. Morgan's September 17 complaint contains a specific allegation that WEA PAC has failed to timely report certain legal expenses in violation of the same RCW provisions.

As an initial matter, we believe that Mr. Morgan's August 20 complaint should be dismissed as unfounded or frivolous because his bare-bones allegations of late reporting largely involve amended reports and thus cannot be treated as supported or substantiated based on filing dates alone. If the agency chooses to nonetheless devote further resources to this matter, we believe that a reminder or warning letter would be most appropriate given the Committee's good faith efforts to timely and accurately report and mitigating circumstances related to the frequency and complexity of the Committee's reporting. Mr. Morgan's September 17 complaint is unfounded and should be dismissed because WEA PAC was not required to report the legal expenses at issue on its September 11 C-4 report pursuant to WAC 390-16-042.

I. WEA PAC objects to further assessment of Mr. Morgan's broad and unsubstantiated complaint.

Mr. Morgan's campaign to tax the resources of the PDC and respondent committees in the lead-up to a general election was already troubling. But his recent practice of filing sweeping allegations of late reporting is particularly harmful for respondent committees that must spend significant time to

reconstruct which reports, if any, flagged by Mr. Morgan were in fact untimely. While WEA PAC has endeavored to review and offer explanation for the 286 reports included in Mr. Morgan’s complaint, Mr. Morgan’s broad allegations, and mixed signals from agency staff about their approach to evaluating them, does not provide the committee with adequate notice as to the true scope of the agency’s potential investigation. It should not be that Mr. Morgan’s filing of a cursorily annotated spreadsheet of the Committee’s past reports—with no evidence or allegation that any information required to be disclosed was in fact withheld from the public—is enough to obligate the Committee to review five years of reporting and to make Mr. Morgan’s case for him through its response to the agency. Rather, the PDC should dismiss Mr. Morgan’s complaint as unfounded unless and until he is able to provide specific allegations of information that was required to be disclosed and was late reported—accounting for permissible reasons a committee may file after a reporting deadline.¹ Such an approach would be consistent with the instruction in the Fair Campaign Practices Act (FCPA) that the Act be construed “to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed.” RCW 42.17A.001.

Having lodged this objection, WEA PAC offers the below argument and explanation in response to Mr. Morgan’s late reporting allegations in the hopes of securing a resolution to the consolidated complaint.

II. Legal Background

Under the FCPA, political committees must file reports of contributions and expenditures made as well as bank deposits on prescribed schedules. RCW 42.17A.235. However, amendments to previously filed reports are expressly allowed for under the Act, *see* RCW 42.17A.235(10), and neither the Act nor accompanying regulations impose rigid penalties for late or amended reporting. Such penalties would have the perverse effect of discouraging committees from correcting past errors or offering additional disclosure through late or amended reports.

Moreover, the PDC’s enforcement procedures recognize that the potential harm to the public of a committee’s late reporting depends on the nature of the information being reported. Thus, a committee’s failure to timely file accurate reports is a minor violation “[w]hen required information is not timely disclosed, but the public is not deprived of critical information” or “[w]hen incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information.” WAC 390-37-061. Additionally, the Director may consider the specific context in which the late and amended reporting occurs in determining whether an alternative response to alleged noncompliance is appropriate. Specific factors weighing in favor of an alternative response include:

- 1) Whether the amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent; and
- 2) Whether the respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to the respondent’s attention (e.g.,

¹ *See* Complaint Return Letter for PDC Case No. 32210, dismissing blanket allegations including that amended reports were late filed on the basis that the complainant (Mr. Morgan) failed to provide evidence to support or substantiate his complaint.

filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).

WAC 390-37-061. The PDC may also consider other circumstances that mitigate or explain late reporting or other noncompliance. *See id.*

In light of these considerations, this complaint should be dismissed with a reminder or warning as the number of late-filed reports is tiny in comparison to the Committee's total volume of reporting and the Committee's use of amended reports represents a good faith effort to furnish timely and accurate disclosure of critical information in the face of practical constraints.

III. WEA PAC's late filing is minor and has little impact on the public.

As a factual matter, the overwhelming majority of reports flagged by Mr. Morgan as untimely were in fact amendments to timely filed reports. In virtually every instance in which a report was marked on Mr. Morgan's spreadsheet as being more than 21-days late, the Committee in fact provided timely initial disclosure and subsequently furnished amended reports in a good faith effort to increase the accuracy and transparency of its disclosures. This includes reports that do not appear on Mr. Morgan's spreadsheet to be amended reports but were in fact amendments to prior timely filed reports. WEA PAC has been diligent in consistently filing timely reports, even where specific challenges related to the Committee's structure and activities have necessitated the subsequent filing of amendments.

Mr. Morgan's allegations include 212 C-3 and C-4 reports which, on their face, appear as amendments to previously filed reports. The Committee's thorough review of amendments filed more than 21 days after the initial filing deadline identified just one instance in which a corresponding initial report was untimely filed.² In this one instance, the initial report at issue was filed on July 11 rather than July 5, 2022. Mr. Morgan's allegations also included 15 C-3 reports that do not appear on their face to be amended reports and were filed significantly after the applicable filing deadline. However, all 15 of these reports are in fact also amendments to previously filed reports.³ Once again, the Committee's review could identify just one instance in which an initial report was filed after the initial filing deadline. In this case, the initial report at issue was filed on September 14 rather than September 12, 2022.⁴

Including the two late-filed initial reports mentioned above, the Committee has filed C-3 reports between 2 and 10 days late on 38 occasions in the last five years.⁵ As discussed, any report allegedly filed more than 10 days late was in fact an amendment to a previously filed report. WEA PAC has filed a total of 1,114 reports since August 20, 2018, including 850 that were initial rather than amended reports.⁶ Thus,

² C-3 Report No. 110098558, subsequently amended by C-3 Reports No. 110136693 and 110136718.

³ The Committee is unsure why these reports do not appear in the PDC's system as amendments. The following reports are in fact amendments to the initially filed reports indicated parenthetically: 110138235 (110087658); 110138474 (110103585); 110138561 (110105922); 110138609 (110105928); 110138988 (110113039); 110138992 (110115651); 110139068 (110116580); 110139084 (110118937); 110137587 (110122282); 110140213 (110127458); 110139531 (110126675); 110144086 (110133961); 110140214 (110129826); 110143946 (110134168); 110143717 (110131292).

⁴ C-3 Report No. 110113039, subsequently amended by Report No. 110138988.

⁵ It is the Committee's understanding that the PDC does not view a one-day delay in reporting to be a material violation. *See* Complaint Return Letter for PDC Case No. 30906.

⁶ This number is likely not wholly accurate given that some of WEA PAC's amended reporting appears in the PDC system as initial reports.

these late-filed reports represent a small fraction of the Committee's overall reporting. Additionally, as the Committee relies on a reoccurring pool of small-dollar donors who are regularly disclosed, slight delays in its C-3 reporting has minimal impact on public knowledge of its contributor base. As discussed below, WEA PAC faces significant challenges in timely reporting the large volume of small contributions it receives, particularly during the pre-election period, which should also be considered as a mitigating circumstance in evaluating its late reporting.

IV. WEA PAC's filing of amended reports reflects a good faith effort to provide timely disclosure despite practical challenges.

WEA PAC has diligently filed hundreds of timely reports in the last five years. However, two practical constraints faced by the Committee have also necessitated its not infrequent use of amended reports in order to provide both timely and full disclosure to the public.

First, WEA PAC receives thousands of small-dollar donations from WEA members each month. These donations come in through one of two ways: individual credit-card charges, or lump payments collected via payroll deduction and remitted from the K-12 school districts that employ participating WEA members. For school districts that do not utilize WEA PAC's invoicing system, it has proven administratively infeasible for the WEA PAC to consistently verify each of the thousands of individual members who have contributed via payroll deduction and further determine the individuals that must be individually listed on the C-3 report in time to file a fully itemized C-3 report. Instead, WEA PAC has filed a timely initial report that includes the payments received from each school district as miscellaneous receipts. WEA PAC then files an amended report that discloses the same contributions recategorized as small contributions and itemized individual contributions. This practice has minimal impact on public transparency because the Committee is timely filing a C-3 report that accounts for the total amount received and discloses the employers associated with any non-itemized contributions. Individual payroll contributions to the PAC range from \$2.25 to \$10.50 per month and thus need only be itemized to account for aggregate recurring donations. Thus, contributions which are later itemized on an amended report typically come from recurring donors whose names have already been disclosed. While WEA PAC believes that this approach does not deprive the public of critical information (and ensures timely filing), it would be open to working with the PDC to modify its approach to this ongoing reporting challenge.

Second, WEA PAC receives significant in-kind support from WEA, including staff time. The Committee endeavors to report the true cost of this staff time for WEA rather than a WEA-provided approximation of fair market value, accounting for staff salaries and benefits as well as travel and other expenses reimbursed by WEA. However, WEA PAC has not always been able to receive complete time sheet and reimbursement information for the relevant WEA staff by the applicable filing deadline. In these cases, the PAC provides its best good faith estimate of in-kind contributions received and subsequently amends its reporting to provide updated dollar values based on any additional information it subsequently receives from WEA. These amendments entail adjustments up or down to already-disclosed in-kind contributions, not first-time reporting of previously undisclosed contributions or expenditures. Once again, the PAC's use of amended reports allows it to timely file an initial report and to later make adjustments based on new information. The Committee has also worked with WEA to implement new internal reminder systems that will minimize staff delays in providing the necessary information for its C-4 reports.

The WEA PAC continues to work to address these ongoing practical challenges and to reduce the number of amended reports it files. However, as the Committee consistently files timely initial reports disclosing the required critical information, these amendments have minimal impact on the public.

V. WEA PAC’s filing of amended reports also reflects proactive efforts to review and improve its reporting through audit procedures.

In addition to the above-discussed challenges, WEA PAC’s filing of amended reports is a result of the Committee’s proactive review of its own reporting. WEA PAC conducts a comprehensive internal audit of its reporting in the first quarter of each year followed by an external audit. Given the large volume of reports and activity by the Committee, this is a significant undertaking. If and when the Committee discovers any past errors or omissions in its reporting during this audit process, it promptly amends the relevant report, as well as all subsequent reports to ensure that previous balances and campaign totals are also updated. Thus, a single change often results in amendments to numerous reports. The errors or omissions at issue are typically small, such as missing bank interest, payment processing fees, or a small-dollar donation, or involve the types of in-kind adjustments discussed above. Thus, they are not instances in which the public has been deprived of critical information. The Committee has at all times made a good faith effort to comply with disclosure requirements and takes active steps to ensure that its reporting contains all required information. WEA PAC is currently implementing a quarterly internal review process in addition to its annual audit to reduce the amount of time between its filing of initial reports and the filing of any necessary amended reports.

VI. WEA PAC was not required to disclose August legal expenses on its September 11 C-4 report.

The FCPA defines “expenditure” to include a “promise to pay” and provides that “agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment has been made.” RCW 42.17A.005(22). Further, RCW 42.17A.240(9)(a) requires that committees report “[t]he name and address of any person and the amount owed for any debt with a value of more than seven hundred fifty dollars that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or with ten business days during any other period.” WAC 390-16-042 updates the reporting threshold and partially clarifies the timelines for reporting campaign debts. It provides:

- (i) For reports due within 30 days of an election, debts or obligations of more than \$1,000 must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period.
- (ii) For reports due during any other reporting period, debts or obligations of more than \$1,000 must be reported if the debt or obligation has been outstanding for more than 10 business days as of the last day of the reporting period.

WAC 390-16-042(d)(i)-(ii). The Committee reads this language to mean that it is only obligated to report a promise to pay for services rendered when the obligation is outstanding—that is, the service provider has made a request for payment that has not yet been fulfilled.⁷

WEA PAC was billed for legal services rendered in August during the first week of September. Thus, any debt owed for those services had not been outstanding for more than ten business days by the close of the last reporting period on August 31. WEA PAC was not obligated to report these expenses on its September 11 C-4 report, and its failure to do so is not a violation of the FCPA.

Conclusion

Given the bare-bones nature of Mr. Morgan's late reporting allegations and the sheer number of complaints filed with the PDC, this complaint should be dismissed as unsubstantiated because Mr. Morgan has failed to provide evidence of late-reported information beyond the dates on which the Committee has filed reports. Allowing the complaint to go forward imposes an unjustified burden on WEA PAC and committees similarly targeted by Mr. Morgan's late reporting spreadsheets. If the PDC chooses to pursue further assessment of this matter, it should ultimately be dismissed with a reminder or warning letter because WEA PAC has engaged in good faith efforts to timely and accurately file required reports despite significant practical challenges and the public has not been deprived of critical information. This would be consistent with the agency's approach in other complaints involving allegations of late reporting.⁸ Mr. Morgan's more recent allegation that the Committee has failed to properly disclose legal expenses on its September 11 C-4 report is unfounded because WEA PAC is not yet obligated to report those expenses.

Please contact us with any questions or concerns at (206) 644-6002.

Sincerely,



Abby Lawlor

Danielle Franco-Malone

Counsel for Washington Education Association PAC

⁷ This interpretation is predicated on the assumption, fully applicable to the present case, that the service provider provides timely notice of the payment obligation, e.g., sends out regular monthly invoices. Clearly, the reporting obligation could not be evaded by having the service provider simply fail to send a timely invoice. Additionally, this interpretation would not apply if a commitment to pay a specific amount of money has been made, e.g., an agreement to make a specific expenditure. It would only apply, as here, where there is a generalized promise to pay for services rendered, but there is no information available, until the invoice is provided by the service provider, regarding how much money will ultimately be owed to that provider.

⁸ See, e.g., PDC Case No. 27923 (complaint involving reports filed between 1-10 days late and amendments of timely reports dismissed with reminder); PDC Case No. 47219 (complaint involving periodic late reports dismissed with reminder); PDC Case No. 30820 (complaint involving periodic late reports and large volume of timely reporting dismissed with reminder); PDC Case No. 51086 (complaint involving failure to timely report in-kind staff contributions and other late reporting dismissed with warning as \$3,843.78 in late disclosed staff time was "not material in amount and had no impact on the public"); PDC Case No. 59665 (complaint involving reports filed between 2-107 days late dismissed with warning).