

April 16, 2020

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

Re: PDC Case No. 43940

Mr. Lavalley,

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,



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