

1  
2  
3  
4  
5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**  
6 **OF THE STATE OF WASHINGTON**

7 IN RE COMPLIANCE WITH RCW 42.17A:

PDC CASE NO. 13-019

8 American Civil Liberties Union (ACLU  
9 National); ACLU Washington (ACLU-WA);  
10 ACLU-WA Foundation; and ACLU-WA  
Endowment

ORDER OF DISMISSAL

11 Respondents.  
12  
13

14 This matter came before the Washington State Public Disclosure Commission (PDC)  
15 on October 24, 2013 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington.  
16 Those present included Grant Degginger, Vice Chair; Barry Sehlin, Member; and Kathy  
17 Turner, Member.<sup>1</sup> In attendance were Kurt Young, PDC Compliance Officer; Andrea  
18 McNamara Doyle, PDC Executive Director; Nancy Krier, Commission General Counsel; and  
19 PDC staff member Nancy Coverdale as recorder/reporter of the proceeding. No  
20 representatives of the Respondents, American Civil Liberties Union (ACLU National); ACLU  
21 Washington (ACLU-WA); ACLU-WA Foundation; or ACLU-WA Endowment, were present.  
22 The proceeding was open to the public and recorded.

23 This case concerns allegations in a 45-day citizen action letter (complaint) filed by  
24 Arthur West, Steve Sarich, John Worthington, and Saroj Sidhu pursuant to RCW

25 \_\_\_\_\_  
26 <sup>1</sup> Commission Chair Amit Ranade recused himself and did not participate in this matter.

1 42.17A.765(4) on October 2, 2012 alleging that the Respondents<sup>2</sup> violated RCW 42.17A.205,  
2 42.17A.235, and 42.17A.240 by failing to timely register as a political committee and failing to  
3 disclose contribution and expenditure activities undertaken in support of Initiative 502 (I-502).  
4 The complaint was submitted to the Washington State Attorney General's Office and the King  
5 County Prosecutor's Office, and was referred to the PDC by the Attorney General's Office for  
6 investigation and possible action.

7 The Commission was provided with a Report of Investigation dated October 18, 2013  
8 (and exhibits); and, an Executive Summary and PDC Staff Analysis. Mr. Young summarized  
9 the investigation, and described the PDC Staff recommendation that the Commission (1) enter  
10 an order dismissing the allegation that Respondents ACLU National, ACLU-WA, ACLU-WA  
11 Foundation; and ACLU-WA Endowment were a political committee required to register and  
12 report with the PDC, and (2) recommend that the Attorney General and King County  
13 Prosecuting Attorney take no further action with respect to the allegations.

14 The Commission voted unanimously to dismiss the allegations and to recommend no  
15 further action by the Attorney General and King County Prosecuting Attorney with respect to  
16 the allegations.

17 The Commission hereby enters the following Findings of Fact, Conclusions of Law,  
18 and Order.

## 19 I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### 20 Jurisdiction

21 1. The Commission has jurisdiction to hear this matter as provided in RCW  
22 42.17A.

---

25 <sup>2</sup> The Respondent entities were collectively referenced in the complaint; however, for ease of reference  
26 they will be described separately in this order.

1 **Findings of Fact**

2 **ACLU National**

3 1. ACLU National is a nationwide, non-profit, non-partisan, member organization  
4 that defends civil rights and civil liberties in the United States. Its headquarters are in New  
5 York City and Washington D.C, and it has affiliate chapters operating in all 50 states.

6 2. Based on the evidence reviewed, there is no reason to find that ACLU National  
7 had an obligation to register and report as a political committee supporting I-502 as alleged in  
8 the complaint.

9 **ACLU Washington, ACLU-WA Foundation, and ACLU-WA Endowment**

10 3. The Washington chapter of ACLU National is ACLU Washington (ACLU-WA)  
11 which is comprised of three separate corporate entities: (1) ACLU-WA; (2) ACLU-WA  
12 Foundation; and (3) ACLU-WA Endowment.

13 4. During 2011 and 2012, ACLU-WA and ACLU-WA Foundation made  
14 expenditures in support of I-502. ACLU-WA Endowment made no such expenditures.

15 ***ACLU-WA***

16 5. ACLU-WA is registered with the PDC as a lobbyist employer. From May 1,  
17 2011 through December 31, 2012, ACLU-WA timely disclosed on Monthly Lobbyist  
18 Employer Contribution reports (L-3c reports) monetary and in-kind contributions to New  
19 Approach Washington, in support of I-502, totaling \$89,194.

20 6. During the period December 1, 2011 through December 31, 2012, ACLU-WA  
21 timely disclosed on monthly L-3c reports in-kind contributions to Washington United for  
22 Marriage, in support of Referendum 74 (R-74), totaling \$57,778.

23 7. From April 1, 2011 through March 31, 2012, seven percent of ACLU-WA's  
24 expenditures were for contributions to committees supporting I-502 and R-74.

25 8. From April 1, 2012 through October 31, 2012, six percent of ACLU-WA's  
26 expenditures were for contributions to ballot propositions in Washington State.

1 9. ACLU-WA does not accept contributions to be used to support or oppose ballot  
2 propositions. No evidence was found or provided that ACLU-WA solicited or received  
3 contributions for the purpose of supporting I-502 or R-74, as alleged in the complaint.

4 10. The stated goals and mission of ACLU-WA extend far beyond the legalization  
5 of marijuana and same sex marriage, and during 2011 and 2012, the majority of ACLU-WA  
6 activities did not appear to address the legalization of marijuana or same sex marriage.

7 11. The approval of I-502 and R-74 by the voters of Washington State did not  
8 substantially achieve ACLU-WA's diverse goals.

9 12. During the period April 1, 2011 through October 31, 2012, ACLU-WA directed  
10 between six and eight percent of its total expenditures to supporting I-502 and R-74. No  
11 evidence was found that this level of support for I-502 and R-74 was a primary purpose of  
12 ACLU-WA.

13 ***ACLU-WA Foundation***

14 13. On September 28, 2012, ACLU-WA Foundation filed a Special Political  
15 Expenditures report (C-7 report) disclosing monetary and in-kind contributions made in  
16 support of I-502 during calendar year 2011, totaling \$168,165. The C-7 report was filed 212  
17 days late, which was five weeks before the 2012 general election.

18 14. On January 4, 2013, ACLU-WA Foundation timely filed a C-7 report disclosing  
19 monetary and in-kind contributions made in support of I-502 during calendar year 2012,  
20 totaling \$191,193.

21 15. From April 1, 2011 through March 31, 2012, eight percent of ACLU-WA  
22 Foundation's expenditures were for contributions to I-502.

23 16. From April 1, 2012 through October 31, 2012, six percent of ACLU-WA  
24 Foundation's expenditures were for contributions to I-502.

25 17. ACLU-WA Foundation does not accept contributions to be used to support or  
26 oppose ballot propositions. No evidence was found or provided that ACLU-WA Foundation

1 solicited or received contributions for the purpose of supporting I-502 or R-74 as alleged in the  
2 complaint.

3 18. The stated goals and mission of ACLU-WA Foundation extend far beyond the  
4 legalization of marijuana and same sex marriage, and during 2011 and 2012, the majority of  
5 ACLU-WA Foundation activities did not appear to address the legalization of marijuana or  
6 same sex marriage.

7 19. The approval of I-502 and R-74 by the voters of Washington State did not  
8 substantially achieve ACLU-WA Foundation's diverse goals.

9 20. During the period April 1, 2011 through October 31, 2012, ACLU-WA  
10 Foundation directed between six and eight percent of its total expenditures to supporting I-502  
11 and R-74. No evidence was found that this level of support for I-502 and R-74 was a primary  
12 purpose of ACLU-WA Foundation.

### 13 ***ACLU-WA Endowment***

14 21. ACLU-WA Endowment made no expenditures in support of I-502. Based on  
15 the evidence reviewed, there is no reason to find that ACLU-WA Endowment had an  
16 obligation to register and report as a political committee supporting I-502 as alleged in the  
17 complaint.

### 18 **Conclusions of Law**

19 1. RCW 42.17A.005(39) defines "political committee" as "any person (except a  
20 candidate or an individual dealing with his or her own funds or property) having the  
21 expectation of receiving contributions or making expenditures in support of, or opposition to,  
22 any candidate or any ballot proposition."

23 2. RCW 42.17A.205 require political committees to register with the PDC if they  
24 have the expectation of receiving contributions or making expenditures in support a statewide  
25 ballot proposition.

1           3.     RCW 42.17A.235 states that RCW 42.17A.240 requires political committees,  
2 including bona fide political party committees, to timely and accurately file reports of  
3 contributions and expenditures, including the disclosure of contributions made to candidates  
4 for public office.

5           4.     **PDC Interpretation 07-02, *Primary Purpose Test Guidelines***, distills relevant  
6 case law and other legal guidance (AGO 1973 No. 14, *State v. Dan Evans Committee*, and  
7 *Evergreen Freedom Foundation v. Washington Education Association*) concerning the  
8 definition of “political committee” in RCW 42.17.020(39) (now codified as RCW  
9 42.17A.005(39)). As discussed in the Interpretation, a person is a political committee if that  
10 person becomes a “receiver of contributions” to support or oppose candidates or ballot  
11 propositions, or if expenditures to support or oppose candidates or ballot propositions become  
12 one of the person’s primary purposes.

13           5.     Respondents ACLU National, ACLU-WA, ACLU-WA Foundation, and  
14 ACLU-WA Endowment were not a political committee as defined at RCW 42.17A.005(39)  
15 and as interpreted and described by the courts in PDC Interpretation 07-02 during the period at  
16 issue in this case.

17           6.     Respondents ACLU National, ACLU-WA, ACLU-WA Foundation, and  
18 ACLU-WA Endowment did not have the expectation of receiving contributions in support of,  
19 or opposition to, any candidate or any ballot proposition in Washington State during the time  
20 period reviewed.

21           7.     Respondents ACLU National and ACLU-WA Endowment did not make  
22 expenditures in support of I-502 or R-74.

23           8.     Respondent ACLU-WA’s and Respondent ACLU-WA Foundation’s  
24 expenditures in support of I-502 and R-74 were not a primary purpose of those entities.  
25  
26



1 American Civil Liberties Union (ACLU National)  
Attn: Terrence Dougherty  
2 125 Broad St. 18<sup>th</sup> Floor  
New York, NY 10004  
3

4 I, Philip E. Stutzman, certify that I mailed a copy of this order to  
Respondents ACLU-WA, ACLU-WA Foundation, and ACLU-WA Endowment, through  
5 their counsel as noted above, and to Respondent ACLU National, postage prepaid, on the  
date stated herein.

6 Philip E. Stutzman  
7 Signature

11/5/2013  
Date

# INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

## APPEALS

### RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

### FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

## ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.