

**Executive Summary and Staff Analysis**  
**Freedom Foundation**  
(45-Day Citizen Action Complaint)  
PDC Case No. 8336

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 8336, a 45-Day Citizen Action Notice filed on August 30, 2016 with the Washington Attorney General and Thurston County Prosecutor by Dmitri Iglitzin and Laura Ewan on behalf of the Campaign to Prevent Fraud and Protect Seniors (Yes on I-1501), alleging violations of RCW 42.17A by the Freedom Foundation.

**Background**

The Attorney General's Office referred the Complaint to the PDC on September 30, 2016, formally requesting investigation and possible action. Earlier, on September 20, 2016, PDC staff sent a letter to Freedom Foundation litigation counsel James Abernathy and David Dewhirst, requesting a written response. On September 21, 2016, Freedom Foundation Managing Attorney Greg Overstreet provided a preliminary response to the allegations in the Notice. On October 6, 2016, Mr. Overstreet provided a formal response to the Notice.

**Allegations**

The Notice alleged that the Freedom Foundation failed to file special C-6 reports disclosing independent expenditure activity in opposition to statewide Initiative 1501, an alleged violation of RCW 42.17A.255 and WAC 390-16-063. The Notice further alleged that Freedom Foundation is a political committee under the "maker of expenditures" prong of the statutory definition of that term, and failed to register as required under RCW 42.17A.205 and report expenditures as required under RCW 42.17A.225<sup>1</sup>.

**Investigative Findings and Conclusion**

Based on the factors identified in the investigation, staff found and concluded as follows:

As of the current date, the Freedom Foundation has incurred at least \$4,054 in expenditures to oppose I-1501, including expenditures for paid staff time spent creating print and video voters' guide statements opposing the initiative, and expenditures for an anti-1501 Web site and email address. \$100 of these expenditures were incurred on or before August 12, 2016. These expenses were required to be disclosed on form C-6 beginning on August 17, 2016, and were first disclosed 28 days later on an L-2 lobbyist expense report that Freedom Foundation Director of Labor Policy Maxford Nelsen filed on September 14, 2016. The expenses were disclosed as required on the C-6 form on September 20, 2016, which was 34 days after the statutory filing deadline.

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<sup>1</sup> RCW 42.17A.225 provides contribution and expenditure disclosure requirements for a continuing political committee. PDC staff reviewed the evidence for indications that the Freedom Foundation met the statutory definition of a political committee, and so was required to report under any political committee reporting provision of RCW 42.17A, including RCW 42.17A.225, RCW 42.17A.235, and RCW 42.17A.240.

The Freedom Foundation failed to file a C-6 report disclosing additional staff expenses incurred in July 2016 for communications written and produced by Jeff Rhodes and David Bramblett in their respective positions as the Freedom Foundation's Managing Editor and Creative Director. PDC staff's review of these communications indicates that they express the Freedom Foundation's opposition to I-1501, were not written by uncompensated volunteers, and were not disclosed by any political committee as a contribution from the Freedom Foundation. However, the Foundation maintains that the communications and related staff expenses are not subject to the disclosure requirements of RCW 42.17A.255, and declined to file a C-6 form to disclose the expenses.

Finally, it is unclear whether the Freedom Foundation has disclosed staff expenses connected with Maxford Nelsen's paid time spent in an appearance before the Seattle *Times* editorial board to oppose I-1501. The Foundation promised a response regarding these staff expenses, but none has been received as of the date of this report.

Concerning the allegation that the Freedom Foundation met the definition of a "political committee" as that definition has been applied by courts, PDC staff reviewed the evidence to determine whether expenditures for electoral political activity are or were one of the Foundation's primary purposes during the five-year period for the limitation on state actions under RCW 42.17A.770.

Staff found and concluded that the Freedom Foundation's goals are essentially non-electoral in nature. While the Freedom Foundation's activities in opposing I-1501 do further the organization's stated goals and mission, staff found that a favorable outcome for the Foundation in the I-1501 campaign would not substantially achieve the Foundation's purpose. Finally, reviewing the Foundation's IRS 990 forms for calendar years 2011 – 2014, and a description of the Foundations revenue and program service expenditures from 2011 to the present, staff found that the Foundation's expenditures average approximately 2.4 million dollars annually, and that electoral political activity accounts for less than 1% of this amount. While increased involvement in the I-1501 campaign could change the Freedom Foundation's status, no evidence was found that the Foundation currently meets the definition of a political committee, or that it failed to comply with political committee registration and reporting requirements.

### **Recommendation**

For the reasons described above, staff recommends that the Commission find multiple apparent violations of RCW 42.17A.255 by the Freedom Foundation for the Foundation's failure to disclose or timely disclose independent expenditure activity opposing Initiative 1501, and recommend to the Washington Attorney General that that office take appropriate legal action to address the apparent violations. Staff recommends that the Commission recommend no action by the Attorney General concerning the allegation that the Freedom Foundation failed to register and report as a political committee under RCW 42.17A.205, RCW 42.17A.225, RCW 42.17A.235, or RCW 42.17A.240.