



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 8336
WITH RCW 42.17A)	
)	
Freedom Foundation)	REPORT OF INVESTIGATION
)	
Respondent.)	
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I. BACKGROUND

- 1.1 The Freedom Foundation is a 501(c)(3) federal tax-exempt organization registered as a charity and a non-profit corporation with the Washington Secretary of State. The Web site of the Freedom Foundation, www.FreedomFoundation.com, describes the organization as a “non-profit think and action tank [and] a national leader in winning the fight for freedom at the state and local level.” Founded in 1991 by Bob Williams and Lynn Harsh as the Evergreen Freedom Foundation, today’s Freedom Foundation has offices in Olympia, Washington and Salem, Oregon. Tom McCabe is the CEO of the Freedom Foundation, Greg Overstreet is the Foundation’s Managing Attorney, Maxford Nelsen is its Director of Labor Policy, Jeff Rhodes is the Foundation’s Managing Editor, and David Bramblett is its Creative Director.
- 1.2 Washington State Initiative 1501 (I-1501) is a statewide ballot proposition filed with the Washington Secretary of State on February 22, 2016, and certified for the 2016 general election ballot on August 1, 2016. Eric “Knoll” Lowney is the initiative’s sponsor. According to its official ballot title, I-1501 “would increase the penalties for criminal identity theft and civil consumer fraud targeted at seniors or vulnerable individuals; and exempt certain information of vulnerable individuals and in-home caregivers from public disclosure.” Critics of I-1501 allege that the initiative’s true purpose is to prevent the disclosure of the names and contact information for state-paid care providers to critics of organized labor such as the Freedom Foundation, who would use that information to inform providers that they no longer are required to pay union dues or fees following the 2014 U.S. Supreme Court ruling in *Harris v. Quinn*. **(Exhibit 1.)**

- 1.3 The Campaign to Prevent Fraud and Protect Seniors is a political committee registered with the Public Disclosure Commission to promote I-1501. As of the date of this report, the committee's sole contributors are Service Employee International Union (SEIU) Local 925 and SEIU 775. Together, SEIU 925 and SEIU 775 have made \$1,456,491 in monetary and in-kind contributions to the committee.
- 1.4 On August 30, 2016, Dmitri Iglitzin and Laura Ewan filed a 45-day Citizen Action Notice (Notice) with the Washington Attorney General and Thurston County Prosecutor 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. **(Exhibit 2.)** On September 20, 2016 and September 27, 2016, Mr. Iglitzin and Ms. Ewan submitted letters and documents containing updated information to support their allegations. **(Exhibits 3, 4.)**

II. ALLEGATIONS IN COMPLAINT

- 2.1 The August 30, 2016 Notice filed by Dmitri Iglitzin and Laura Ewan and their September 20 and 27, 2016 updates 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 alleged independent expenditure activity consisted of the following:

- Payments for the staff time of Freedom Foundation Director of Labor Policy Maxford Nelsen, spent in writing the Washington State Voters' Pamphlet argument against I-1501;
- Payments for the staff time of Mr. Nelsen and Freedom Foundation Managing Editor Jeff Rhodes, spent in writing blog posts allegedly in opposition to I-1501;
- Payments for the staff time of Mr. Nelsen, spent in attending a Seattle Times editorial board interview to represent opposition to I-1501;
- Payments for the staff time of Mr. Nelsen, spent in filming the TVW "Video Voters Guide" statement in opposition to I-1501;
- Payments for the staff time of Freedom Foundation Creative Director David Bramblett, spent in writing and filming video blog posts allegedly in opposition to I-1501; and
- Expenses for the web domain *1501truth.com* and an associated email address.

- 2.2 The August 30, 2016 Notice and subsequent updates by Mr. Iglitzin and Ms. Ewan 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.225¹. Although not stated explicitly, the allegation suggested that the Freedom Foundation had, as one of its primary purposes, the making of expenditures to support or oppose candidates or ballot propositions, and so met the definition of a political committee in the law as interpreted by the Washington Supreme Court in *State v. Evans*, later by the Court of Appeals, Division II, in *Evergreen Freedom Foundation v. Washington Education Association*, and finally by the State Supreme Court in *Utter v. BIAW*.

III. FINDINGS

Alleged Failure by Freedom Foundation to file C-6 Reports of Independent Expenditure Activity

- 3.1 **Response by Freedom Foundation:** On September 21, 2016, Freedom Foundation Managing Attorney Greg Overstreet provided a preliminary response to the allegations in the Notice. **(Exhibit 5.)** On October 6, 2016, Mr. Overstreet provided a formal response to the Notice. **(Exhibit 6.)**
- 3.2 In his preliminary and formal responses, Greg Overstreet acknowledged that the Freedom Foundation incurred expenses for the staff time of Maxford Nelsen, spent in writing the Washington State Voters’ Pamphlet argument in opposition to I-1501; evidence enclosed with the Notice indicates that this work was conducted on or before August 12, 2016. Mr. Overstreet stated further that Mr. Nelsen participated in taping the TVW “Video Voters Guide” statement on August 25, 2016. Finally, Mr. Overstreet acknowledged that the Freedom Foundation incurred expenses for the web domain *1501truth.com* and an associated email address; evidence enclosed with the Notice indicates that the domain registry information was created on August 12, 2016, and updated on August 26, 2016.
- 3.3 **Initial Disclosures by Freedom Foundation:** Mr. Overstreet stated that before the date of the August 30, 2016 Notice, the Foundation consulted with legal counsel to determine whether and how its activity in opposition to I-1501 was required to be reported under RCW 42.17A. Mr. Overstreet stated that on September 13, 2016, Maxford Nelson contacted PDC staff to

¹ RCW 42.17A.225 provides contribution and expenditure disclosure requirements for a continuing political committee, defined under RCW 42.17A.005(12) as “a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.” A committee established to oppose a statewide initiative such as I-1501 would be classified as an election year committee, and would report under RCW 42.17A.235 and RCW 42.17A.240. For this investigation, 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.

discuss reporting the activity on Mr. Nelsen's monthly L-2 Lobbyist Expense Report; PDC staff records and copies of Mr. Nelsen's correspondence provided by the Foundation indicate that Mr. Nelsen first contacted PDC staff at 5:46 pm on September 13, 2016. **(Exhibit 7.)**

- 3.4 On September 14, 2016, Mr. Nelsen filed an L-2 report disclosing \$2,983.38 in Foundation staff time and expenses incurred in opposition to I-1501 during the month of August, including the committee drafting the statement opposing I-1501 for the voter's pamphlet and recording the TVW Video Voter's guide. **(Exhibit 8.)**¹ Mr. Overstreet stated that the \$1,500 costs of creating the *1501truth.com* web site and associated email address were also included in the total, though the payment to the contractor was not made until September. He stated that the cost of the web site and email address included all services performed in connection with those activities.
- 3.5 On September 20, 2016, Maxford Nelsen filed an amended L-2 report for August, removing expenses associated with the anti I-1501 web site in favor of disclosing those expenses on his L-2 for the month of September, due on October 15, 2016. **(Exhibit 8.)** Also on September 20, 2016, Mr. Nelsen filed a C-6 special report disclosing a total of \$3,222 in independent expenditure activity, including both the Freedom Foundation staff time spent preparing print and video voters' guide statements in opposition to I-1501, and \$1,500 in payments to Tenet Creative of Puyallup, described as a "website build." **(Exhibit 9.)** These last payments were described as made on September 5, 2016, and first presented to the public nine days earlier, on August 26, 2016.
- 3.6 On October 10, 2016, Mr. Nelsen filed an amended C-6 report, maintaining the previous disclosure of \$1,500 in payments to Tenet Creative, but adding \$832 in unitemized expenditures of \$100 or less, increasing the total independent expenditures on the report to \$4,054. **(Exhibit 10.)**
- 3.7 The evidence in the complaint and response indicates that at least \$100 of the expenditures disclosed on the Freedom Foundation's September 20, 2016 C-6 filing were incurred on or before August 12, 2016, the date that the Foundation reserved the Web domain *1501truth.com*, and the date by which Maxford Nelsen completed his part of work in writing the voters' pamphlet statement in opposition to I-1501. It appears these expenses were required to be disclosed on form C-6 beginning on August 17, 2016, and were first disclosed 28 days later on the L-2 lobbyist expense report that Mr. Nelsen filed on September 14, 2016. The expenses were disclosed on the C-6 form 34 days after the statutory filing deadline.
- 3.8 **Activity Not Disclosed by Freedom Foundation:** In his response to the Notice, Mr. Overstreet asserted that time spent by Foundation staff members

¹ The L-2 report included as Exhibit 8 reflects the date of the original filing on September 20, 2016, but the information disclosed reflects the amended report filed on September 27, 2016.

in writing or producing print or video blog posts on the Foundation's Web site was not reportable independent expenditure activity. In outlining this position, he cited the definition of "independent expenditure" in RCW 42.17A.005(26), which, among other criteria, requires that an independent expenditure consist of political advertising in support of or opposition to a candidate. He also cited the definition of "political advertising" in RCW 42.17A.005(36), which requires that political advertising be a means of mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in an election campaign. Mr. Overstreet stated that the print and video blog posts on the Foundation's Web site do not express the Foundation's formal support for or opposition to I-1501, encourage anyone to vote for or against the ballot proposition, or appeal for financial support to oppose I-1501.

- 3.9 The definitions of "independent expenditure" and "political advertising" cited in Mr. Overstreet's formal response apply primarily to the disclaimer and sponsor identification requirements for political advertising under RCW 42.17A.320(2). The C-6 independent expenditure disclosure requirement of RCW 42.17A.260 also requires that a reportable expenditure pay for political advertising. In contrast, the reporting requirement identified in the Notice, RCW 42.17A.255, does not involve either the definition of "independent expenditure" in RCW 42.17A.005(26), or the definition of "political advertising" in RCW 42.17A.005(36). Rather, RCW 42.17A.255 contains its own definition of an independent expenditure, which requires only that a reportable expenditure be made in support of or in opposition to any candidate or ballot proposition, have an aggregate value of at least \$100, and not fall under the reporting requirements for candidates or political committees. Accordingly, an expenditure reportable under RCW 42.17A.255 could consist of an independently-sponsored mass communication expressly advocating the election or defeat of a candidate (political advertising), but it could also consist of a payment for activity that lacks expressive content, e.g., paid distribution of campaign information by canvassers. To the extent that the definition of "independent expenditure" exempts services, as opposed to communications, from the reporting requirement, it requires that such exempt services be volunteer services uncompensated by any person.
- 3.10 In any case, staff's review of the blog entries at issue indicates that they do express the Freedom Foundation's opposition to I-1501, through the use of language such as "*I-1501 is a fraud and deserves to be exposed for what it is,*" and "*Because no one would support a ballot measure that promised to use the instrument of government to keep citizens in the dark about their legal rights, I-1501 was given a very deceptive title, claiming only that it 'concerns seniors and vulnerable individuals.'*" **(Exhibit 2, pp 62-63; pp 79-82.)** If such communications were written and produced by Jeff Rhodes and David Bramblett in their respective positions as the Freedom Foundation's Managing Editor and Creative Director, it appears Mr. Rhodes' and Mr. Bramblett's paid time may be subject to the C-6 disclosure requirement of

RCW 42.17A.255. The Freedom Foundation has not disclosed the employees' time on the C-6 form, or in any other PDC filing.

- 3.11 Finally, in his formal response to the Notice, Mr. Overstreet described that Maxford Nelsen's appearance before the Seattle *Times* editorial board to oppose I-1501 occurred on September 28, 2016. However, neither his preliminary response nor his formal response appeared to identify any previously-disclosed staff expenses connected with Mr. Nelsen's paid time. It appears possible that the amended C-6 filing that the Freedom Foundation filed on October 10, 2016 may include Mr. Nelsen's time in meeting with the editorial board. PDC staff requested an explanation concerning the relevant staff expenses, i.e., whether they had already been disclosed, or would appear on a forthcoming report. Mr. Overstreet has promised a response, but none has been received as of the date of this report.

Alleged Failure by Freedom Foundation to Register and Report as a Political Committee

- 3.12 **"Maker of Expenditures" Prong of Political Committee Definition:** As described above, the Notice cited expenditures by Freedom Foundation as evidence that the organization met the definition of a "political committee." To address this allegation, 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.
- 3.13 In *Evergreen Freedom Foundation v. Washington Education Association*, the Court of Appeals, Division II, provided a nonexclusive list of analytical tools that may be used to evaluate such evidence, including:
- The content of the stated goals and mission of the organization;
 - Whether the organization's actions in a given instance further its stated goals and mission;
 - Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
 - Whether the organization uses means other than electoral political activity to achieve its stated goals.
- 3.14 **Freedom Foundation's Goals and Mission:** As expressed on the Freedom Foundation's web site, the organization's mission is "*to advance individual liberty, free enterprise, and limited, accountable government.*" **(Exhibit 11.)** The organization describes its goals as follows:

The Freedom Foundation is working to reverse the stranglehold public-sector unions have on our government. There is no path to expanded freedom, opportunity or prosperity until we make collective bargaining transparent, give government employees a choice to join an employee's union or not, and prohibit taxpayer's money from being unwillingly used to influence the political system. Freedom Foundation has the will and skill to take on those who attack our freedom.

3.15 Freedom Foundation Goals and the Potential Defeat of I-1501:

Washington voters' rejection of I-1501 would maintain the application of the Public Records Act to the names and contact information for state-paid care providers, facilitating the Freedom Foundation's efforts to contact those providers to inform them of their rights under *Harris v. Quinn*. In this sense, it appears that the Freedom Foundation's activities in opposing I-1501 further the organization's stated goals and mission. However, if the Foundation's ultimate goals are to decrease union membership, deprive unions of financing in the form of dues or fees, and so lessen the influence of organized labor on the electoral and political process, then providing *Harris v. Quinn* notification to one segment of union-represented employees (i.e., in-home care providers) may be seen as only one possible means of reaching the Foundation's goals, rather than an end in itself. Accordingly, it does not appear that the Foundation's overarching goals are electoral in nature, or that a favorable outcome for the Freedom Foundation in the I-1501 campaign would substantially achieve the Foundation's purpose.

3.16 Freedom Foundation Expenditures for Electoral Political Activity: In his formal response to the Notice, Mr. Overstreet stated that as a 501(c)(3) tax-exempt organization, federal law and IRS regulations prohibit the Freedom Foundation from financially supporting or endorsing political candidates, and that the Foundation does not do so.

3.17 Notwithstanding this response, the PDC's contribution and expenditure database indicates that the Freedom Foundation (Evergreen Freedom Foundation) made \$2,203 in contributions to state and local bona fide political party committees between 2002 and the present, with the most recent contribution made as recently as April 2016. **(Exhibit 12.)** PDC staff requested a response regarding these contributions from Mr. Overstreet, however no response has been received as of the date of this report.

3.18 Including the contributions described above and the \$4,054 in independent expenditure activity disclosed on September 20 and October 10, 2016, PDC filing records indicate that Freedom Foundation used general treasury funds to make approximately \$6,257 in expenditures for electoral political activity from March 2002 to August of 2016. (While this total does not include expenditures for staff time during the summer of 2016 that the Freedom Foundation has declined to disclose, it appears likely that disclosure of these expenditures would not substantially increase the total reported activity.)

Within the five-year period for the limitation on state actions under RCW 42.17A.770, total reported expenditures for electoral political activity by the Freedom Foundation stands at \$4,454. Nearly all of this activity, \$4,254, occurred in 2016.

- 3.19 **Non-Electoral Activity by the Freedom Foundation:** In his formal response to the Notice, Mr. Overstreet stated, *“For 25 years, the Foundation’s mission has been to promote individual liberty, free enterprise and limited, accountable government. It advances its mission using a variety of means that do not depend on election outcomes, including by conducting and publishing public policy research, engaging in investigative journalism, filing public interest litigation, and engaging in grassroots education and advocacy.”* As examples of the Foundation’s non-electoral work, he stated that during 2016, the Foundation has pursued 30 public interest lawsuits regarding workers’ rights, the Public Records Act, and campaign finance laws. He stated that the Foundation’s policy staff has produced research and commentary on current public issues like education and the minimum wage. Finally, he described the Foundation’s outreach effort to inform state-paid care workers of their rights under *Harris v. Quinn*.
- 3.20 PDC staff reviewed copies of IRS 990 forms filed by Freedom Foundation for all periods within the five-year statute of limitations, up to the report filed on April 27, 2015 for calendar year 2014. **(Exhibit 13.)** In response to PDC staff’s request, Mr. Overstreet stated that no 990 form has yet been submitted to the IRS for calendar year 2015, however he provided a description of revenue and expenditures for that period and the first ten months of 2016, in order for PDC staff to evaluate Freedom Foundation’s electoral expenditures in the context of the organization’s non-electoral activity.
- 3.21 The Freedom Foundation’s IRS 990 forms and other information provided by Mr. Overstreet indicate that Freedom Foundation’s total expenditures for any 12-month period within the five-year statute of limitations averaged approximately 2.4 million dollars:
- 2011: \$2,908,106
 - 2012: \$2,236,573
 - 2013: \$2,263,750
 - 2014: \$2,211,611
 - 2015 – October 2016: Greater revenue than reported for 2014, presumably comparable expenditures

Mr. Overstreet stated that the Freedom Foundation engages in lobbying, which under federal tax rules, may include activity seeking to influence the public’s actions with respect to a ballot proposition. However, he stated that

to the best of the knowledge of current Foundation staff, none of the lobbying expenditures reported to the IRS paid for activity opposing or supporting any ballot proposition. He stated that all such expenditures were made to lobby state or local elected officials or on grassroots lobbying efforts seeking public action on pending legislation.

3.22 This financial information, together with the other evidence reviewed by PDC staff, indicates that at no point in any 12-month period within the statute of limitations did Freedom Foundation's expenditures for electoral political activity constitute a majority of the organization's total expenditures. Based on the available evidence, it appears the Freedom Foundation's expenditures to oppose I-1501 constitute less than two-tenths of 1% of total expenditures expected during 2016 for all programs.

IV. SCOPE

4.1 PDC staff reviewed the following documents:

1. 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;
2. Letters and documents Mr. Iglitzin and Ms. Ewan submitted on September 20, 2016 and September 27, 2016, containing updated information to support their allegations;
3. Information available on the Freedom Foundation Web site, www.FreedomFoundation.com;
4. News accounts concerning I-1501, and the activity of the Freedom Foundation;
5. PDC campaign finance and lobbying reports and data;
6. PDC staff email records;
7. A preliminary response to the Citizen Action Notice, received on September 21, 2016 from Greg Overstreet, Counsel to Freedom Foundation;
8. A formal response to the Notice, received on October 6, 2016 from Mr. Overstreet; and
9. IRS 990 forms filed by Freedom Foundation for 2011 – 2014.

V. LAW

RCW 42.17A.005(37) defines a "political committee" as any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

RCW 42.17A.205 requires every political committee to file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.235 and .240 require every political committee to file reports of contributions and expenditures at specified intervals.

RCW 42.17A.225 provides contribution and expenditure disclosure requirements for a continuing political committee.

RCW 42.17A.255 requires the sponsor of any expenditure made in support of or in opposition to any candidate or ballot proposition, valued at \$100 in the aggregate, and not otherwise required to be reported to file a special report of independent expenditure activity within five days of making a triggering expenditure. Personal services of the sort commonly performed by volunteer campaign workers are exempt from the disclosure requirement. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

WAC 390-16-063(1) states that RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of Chapter 42.17A RCW to disclose an independent expenditure of one hundred dollars or more that supports or opposes a candidate or ballot measure.

Respectfully submitted this 12th day of October, 2016.



Tony Perkins
Compliance Officer

EXHIBIT LIST

- Exhibit 1** *“Reject I-1501 and urge lawmakers to address identity theft,”* Seattle *Times* editorial published October 4, 2016.
- Exhibit 2** 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).
- Exhibit 3** Letter and document Mr. Iglitzin and Ms. Ewan submitted on September 20, 2016 containing updated information to support their allegations.
- Exhibit 4** Letter and documents Mr. Iglitzin and Ms. Ewan submitted on September 27, 2016, containing updated information to support their allegations.
- Exhibit 5** A preliminary response to the Citizen Action Notice, received on September 21, 2016 from Greg Overstreet, Counsel to Freedom Foundation.
- Exhibit 6** A formal response to the Notice, received on October 6, 2016 from Mr. Overstreet.
- Exhibit 7** An email sent by Maxford Nelsen to PDC staff member Jennifer Hansen on September 13, 2016, and Ms. Hansen’s response sent on September 15, 2016.
- Exhibit 8** L-2 Monthly Lobbyist Expense Report filed by Maxford Nelsen on September 14, 2016, and amended on September 20, 2016.
- Exhibit 9** C-6 Independent Expenditure report filed by the Freedom Foundation on September 20, 2016.
- Exhibit 10** Amended C-6 Independent Expenditure report filed by the Freedom Foundation on October 10, 2016.
- Exhibit 11** Excerpt from Freedom Foundation Web site, www.FreedomFoundation.com, accessed on October 12, 2016.

Exhibit 12 A table listing \$2,203 in contributions from the Freedom Foundation to bona fide political party committees made from 2002 – 2016, as reported by recipients.

Exhibit 13 Copies of IRS 990 forms filed by Freedom Foundation for calendar years 2011 through 2014.