



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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April 28, 2017

The Honorable Robert Ferguson
Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

RE: Washington State Public Disclosure Commission Recommendation Following Staff
Review – The Freedom Foundation, PDC Case 14633

Dear Attorney General Ferguson:

This letter concerns a 45-Day Citizen Action Complaint filed with the Washington State Attorney General and Thurston County Prosecutor on January 6, 2017 by Andrew Biviano, founding member of the Northwest Accountability Project.¹ The Complaint alleged that the Freedom Foundation violated RCW 42.17A.205, .235, and .240 by failing to register and report as a political committee under the “receiver of contributions” prong of the definition of a political committee, and RCW 42.17A.255 by failing to report the value of efforts to oppose Initiative 1 as Independent Expenditures on PDC form C-6.

The complaint’s first allegation that the Foundation had an obligation to register and report as a political committee was premised on the Foundation’s August 19, 2016 letter signed by CEO Tom McCabe, that solicited contributions to oppose Initiative 1. The Complaint’s second allegation was that the Foundation used its resources to produce multiple blog posts, podcasts, editorials, and testimony at city council meetings, all in opposition to Initiative 1, and that the Foundation used its resources to file an Amicus brief in a lawsuit brought by the City of Olympia seeking to invalidate Initiative 1.

PDC staff reviewed the Complaint and the Foundation’s response, and prepared an Investigative Review Memorandum concerning the alleged violations. The Commission considered the results of staff’s review at its April 27, 2017 Commission meeting which included a recommendation regarding the allegations. A copy of the Investigative Review Memo is enclosed with this letter. The exhibits to the Memo have previously been provided to the Attorney General’s Office.

¹ PDC staff understands that the Northwest Accountability Project has informed the Attorney General’s Office that they do not intend to commence a court action under RCW 42.17A.765(4) until the Commission has had an opportunity to review staff’s Investigative Review Memo and provide a recommendation to the Attorney General.

Staff Conclusion

As noted in the enclosed Investigative Review Memo, staff concluded that:

Political Committee Allegation – Staff concluded that the evidence does not support the allegation that the Foundation meets the definition of a political committee under the “receiver of contributions” prong, or that it failed to comply with political committee registration and reporting requirements. Staff concluded that the income tax issue was used in the Freedom Foundation’s August 19, 2016 letter to motivate past supporters to donate to the Foundation, and was not an attempt to solicit contributions for a campaign to oppose Initiative 1.

Independent Expenditure Allegation – Staff concluded that the evidence supports the allegation that the Freedom Foundation engaged in multiple activities that were calculated to oppose Initiative 1. The Foundation devoted resources to oppose the initiative that were reportable on C-6 reports.

Commission Recommendation

By a vote of 4 to 1, the Commission adopted a motion to return the Complaint to the Washington Attorney General with a recommendation to take legal action as appropriate concerning the allegations. The Commission explained that this motion was based on the facts identified in staff’s limited review of the allegations in the time afforded under the Citizen Action provisions of RCW 42.17A.765(4).

If you have questions, please contact me at (360) 664-2735. Thank you.

Sincerely,


Evelyn Fielding Lopez
Executive Director

Enclosure: PDC Staff Investigative Review Memorandum

cc: Commissioners
Linda A. Dalton, Sr. Assistant Attorney General
Greg Overstreet, Managing Attorney, The Freedom Foundation
Andrew Biviano, Northwest Accountability Project