



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

Date: April 21, 2017

To: Public Disclosure Commission Members

From: Phil Stutzman, Sr. Compliance Officer

Subject: 45-Day Citizen Action Complaint, The Freedom Foundation, PDC Case 14633

I. Background, Complaint Allegations, Request for PDC Review, and Statutes/Rules

Background:

On January 6, 2017, the Attorney General's Office received a 45-day Citizen Action Complaint (Complaint) filed by Andrew Biviano, Founding Member of the Northwest Accountability Project, alleging that activities engaged in by the Freedom Foundation (Freedom Foundation or Foundation) to oppose Initiative 1, a 2016 City of Olympia ballot proposition, required the Foundation to register and report as a political committee or report its activities as Independent Expenditures. The complaint alleged that because the Freedom Foundation did neither, it violated reporting provisions of RCW 42.17A. Initiative 1 was voted on and rejected in the November 8, 2016 election. (**Exhibit 1**)

Chronology¹

In April 2016, The Olympian newspaper published an article with some of the first details about a planned local initiative:

A petition is circulating for a new ordinance that would tax Olympia's wealthiest households to generate college tuition money for all local high school graduates.

Backed by a volunteer group called Opportunity for Olympia, the proposal calls for creating a 1.5 percent tax on household income in excess of \$200,000.

¹ The Chronology of events surrounding placing Initiative 1 on the ballot is taken from a Memo to Commission members dated October 21, 2016, authored by Evelyn Fielding Lopez and William A. Lemp III, concerning a 45-day Citizen Action Complaint filed by Knoll Lowney, alleging that Councilmembers of the City of Olympia had violated RCW 42.17A.555 by using or authorizing the use of City facilities/funds to oppose Initiative 1 by seeking judicial review of the measure rather than placing it on the November 8, 2016 ballot.

Organizers estimate about 750 households in Olympia city limits would be subject to the tax, which would raise about \$2.5 million a year.

The petition needs 4,702 valid signatures by June 16, 2016 to qualify for the November general election ballot. If the law passes, every public high school graduate and GED recipient living inside Olympia's boundaries would be eligible for money to pay for the first year tuition at any community college, or an equivalent amount can be applied to tuition at any public university in Washington.

Petition calls for taxing Olympia's wealthiest households to create college fund, Andy Hobbs, The Olympian, April 14, 2016.

During April, May, and June 2016, the Olympia City Council convened study sessions and held open meetings to discuss the issues raised by Opportunity for Olympia ("OFO"). At the April 19 study session, Hugh Spitzer, Seattle attorney and University of Washington Law School Professor, made a presentation regarding the City's authority with regard to income taxes.

According to the City of Olympia's Complaint for Declaratory Judgment and Injunctive Relief, on July 6 OFO filed its initiative petition, with signatures, with the City. The petition was titled:

AN ORDINANCE of the City of Olympia, Washington, imposing an excise tax on household income above \$200,000 per year derived from financial transactions, personal activities, business, commerce, occupations, trades, professions and other lawful activities, the revenues therefrom to be dedicated to funding at least one year of free community or technical college for each year's City of Olympia public high school graduates and General Education Development Certificate ("GED") recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington.

On July 7, the City forwarded the initiative petition to the County Auditor to verify the signatures.

In anticipation of signature verification on OFO's initiative petition, on July 12 the Olympia City Council voted to seek judicial review in Thurston County Superior Court to determine whether the proposed initiative was lawful and within the scope of the City's initiative power, and if not, to seek an order enjoining the proposed tax initiative from appearing on the November 8, 2016 ballot.

On July 13, the Thurston County Auditor issued a certificate of sufficiency, signaling that there were enough valid signatures for the proposed initiative to be eligible to be passed without alteration, or placed on the ballot. Once the Auditor certifies that there are sufficient signatures, the City has twenty days to either pass a proposed ordinance or cause the ordinance to be placed on the next general election ballot. RCW 35.17.260. Alternatively, if the City refuses or fails to take action on the initiative, any taxpayer may commence an action in superior court to compel the City to hold an election. RCW 35.17.290. The City had until August 2 (twenty days) to take action, but did not pass the ordinance or place the issue on the ballot.

Instead, on July 22, the City filed an action in Thurston County Superior Court seeking a declaration that the proposed initiative to establish an income tax in the City is beyond the scope of the local initiative power. The City also sought an order enjoining Thurston County and the Thurston County Auditor from placing the proposed income tax initiative on the November 8, 2016 general election ballot.

On July 26, the Olympia City Council approved a resolution to take no action to pass OFO's proposed ordinance or to order an election.

The next day, on July 27, OFO filed a lawsuit against the City of Olympia in Thurston County Superior Court, requesting a judicial decree under RCW 35.17.290 compelling the City to place the initiative on the November 8, 2016 ballot.

Both cases were combined for hearing, and on August 24, 2016, Judge Jack Nevin, a visiting Pierce County Superior Court Judge, granted the City's Motion for Declaratory Judgment and Injunctive Relief, finding that OFO's initiative exceeded local initiative powers, and ordering the Thurston County Auditor to not place the initiative on the ballot. Judge Nevin also denied OFO's Petition for Prevention of Election Error and Motion for Injunctive Relief, thereby denying the request to have the initiative placed on the November ballot.

OFO immediately appealed Judge Nevin's decision to Division II of the Court of Appeals, and requested a stay of the injunction against placing the initiative on the November ballot. On September 2, Commissioner Aurora Bearse of the Court of Appeals, granted OFO's motion to stay the Superior Court's decision to enjoin the placement of their initiative on the November ballot. The Commissioner's order also established that any appeal or motion to modify her ruling would be due by September 6.

The City of Olympia asked a panel of Court of Appeals judges to review the action taken by the Court of Appeals Court Commissioner, but the panel declined to review the ruling. The City did not file any further appeals, and asked the Thurston County Auditor to place the initiative on the November 8, 2016 ballot.

On September 8, 2016, OFO filed a 45-day Citizen Action Complaint alleging that Councilmembers of the City of Olympia had violated RCW 42.17A.555 by using or authorizing the use of City facilities/funds to oppose Initiative 1 by seeking judicial review of the measure rather than placing it on the November 8, 2016 ballot.

On October 27, 2016, after reviewing a staff report and recommendation, the Commission unanimously adopted a motion to return the matter to the Attorney General with a recommendation that the Attorney General not file an action concerning the allegations set out in the complaint by Opportunity for Olympia. On December 22, 2016, the Attorney General's Office informed Opportunity for Olympia that they concurred with the Commission's recommendation, and would not be taking any further action with regard to the complaint.

Complaint Allegations: Andrew Biviano, of the Northwest Accountability Project, alleged that the Freedom Foundation solicited funds and made expenditures for the purpose of engaging in

activities and public communications opposing Initiative 1, a measure that appeared on the November 8, 2016 ballot to establish a college grant program in Olympia, Washington, to be funded by an income tax. The Complaint alleged that the Foundation funded its activities and public communications in opposition to Initiative 1 without registering a political committee, and without filing any disclosure reports.²

Mr. Biviano's complaint alleged that:

1. The Freedom Foundation failed to register and report as a political committee, in violation of RCW 42.17A.205, .235, and .240. The complaint alleged that the Foundation specifically solicited funds to oppose Initiative 1 when Tom McCabe, CEO, sent out a letter dated August 19, 2016, soliciting contributions to oppose Initiative 1. The complaint stated that the funds being solicited by Mr. McCabe were clearly being solicited to fund expenditures in opposition to Initiative 1, and that based on the solicitation letter, the Foundation had an obligation to register and report as a political committee.
2. Even if the Commission does not find that the Foundation is a political committee under the "receiver of contributions" prong, the Foundation violated RCW 42.17A.255 by failing to report its efforts to oppose Initiative 1 as Independent Expenditures on PDC form C-6.

Request for PDC Review: Shortly after January 6, 2017, the Attorney General's Office asked PDC staff to review and possibly investigate the allegations as needed, and provide any recommendation the Commission may have.

Statutes/Rules:

RCW 42.17A.005(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

RCW 29A.04.091 "Measure" includes any proposition or question submitted to the voters.

RCW 42.17A.005(37) defines "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."

Interpretation 07-02 "Primary Purpose Test" Guidelines The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "Political committee" means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to,

² The complaint noted that The Freedom Foundation engaged in similar behavior when it failed to file special C-6 reports disclosing independent expenditure activity in opposition to Initiative 1501, 2016 statewide Initiative, PDC Case 8336, that resulted in a lawsuit being filed by Attorney General's Office, *State of Washington v. Evergreen Freedom Foundation*.

any candidate or any ballot proposition.” RCW 42.17A.005(37) Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals. [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition."]
(Underline emphasis added.)³

RCW 42.17A.205 – Statement of organization by political committees. States in part: Every political committee shall 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 continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

RCW 42.17A.255, states in part: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

II. Staff Investigative Review, Analysis and Conclusions

A. Staff Review of Complaint

PDC staff reviewed the following documents:

- Andrew Biviano’s Citizen Action Complaint, dated January 6, 2017.
- The Freedom Foundation’s response to the Complaint dated January 27, 2017.
- PDC Case 8336, a 45-day Citizen Action Complaint filed by Dmitri Iglitzin and Laura Ewan on behalf of the Campaign to Prevent Fraud and Protect Seniors (Yes on I-1501),

³ The Expenditure Prong of Interpretation 07-02 is not included since the Complaint alleged that The Freedom Foundation became a political committee because it met the “receiver of contributions” prong of the Primary Purpose Test Guidelines.

alleging violations of RCW 42.17A.255 by The Freedom Foundation for allegedly failing to report Independent Expenditures in opposition to I-1501. **(Exhibit 3)**⁴

- PDC Case 8341, a 45-day Citizen Action Complaint filed by Knoll Lowney on behalf of Opportunity for Olympia, alleging violations of RCW 42.17A.555 by City of Olympia Councilmembers for allegedly using public facilities to oppose Initiative 1.

B. PDC Staff Investigative Review Findings, Analysis, and Conclusions

First Allegation: The Freedom Foundation failed to register and report as a political committee, in violation of RCW 42.17A.205, .235, and .240. The complaint alleged that the Foundation specifically solicited funds to oppose Initiative 1 when Tom McCabe, CEO, sent out a letter dated August 19, 2016, soliciting contributions to oppose Initiative 1. The complaint stated that the funds being solicited by Mr. McCabe were clearly being solicited to fund expenditures in opposition to Initiative 1, and that based on the solicitation letter, the Foundation had an obligation to register and report as a political committee.

As noted in the complaint, Mr. McCabe's August 19, 2016 solicitation letter stated in part:

“Right now, we’re locked in a crucial fight right here in our hometown – and we need you on our team if we’re to prevail! ... If Olympia adopts an income tax,... then the rest of the state will follow... Your gift today of \$5,000, \$1,000, \$500, \$250, \$100 or whatever you can afford will greatly help the Freedom Foundation as we make our stand against those who would saddle Washington with an income tax...P.P.S. Your donation today can prevent a statewide income tax tomorrow. Please give as generously as you can. We will fight the imposition of an income tax tooth and nail – and with you on our team, we will prevail.
(Exhibit 1, Pages 8-17)

The Complaint states that Mr. McCabe's solicitation letter was sent in furtherance of the Freedom Foundation's efforts to stop the Olympia income tax and continue educating the public about this crucial issue. Mr. Biviano interprets the solicitation letter as a call for contributions to fund expenditures to oppose Initiative 1. He states that based on the content of the solicitation letter, and the fact that a “receiver of contributions” to support or oppose a ballot proposition is a political committee, The Freedom Foundation is a political committee that failed to register and report in accordance with RCW 42.17A.205, .235, and .240.

Greg Overstreet responded on behalf of the Freedom Foundation on January 27, 2017, denying that it is a political committee with reporting requirements under RCW 42.17A. **(Exhibit 2)** Mr. Overstreet said the allegation that the Freedom Foundation met the “receiver of contributions” prong of the political committee definition relies exclusively upon Tom McCabe's August 19, 2016 fundraising letter to the Foundation's existing supporters, generally requesting funding for the Foundation, not for a campaign. **(Exhibit 1, Pages 8-17)**. Mr. Overstreet states that the August 19 letter does not say or suggest that the Foundation was expecting to receive contributions with which it would make electoral expenditures opposing Initiative 1. He notes

⁴ Exhibit 3 to this Memo is the Recommendation letter to the Attorney General's Office and PDC's Executive Summary and Staff Analysis for PDC Case 8336, a 45-day Citizen Action Complaint filed August 30, 2016 alleging violations of RCW 42.17A.255 by The Freedom Foundation for allegedly failing to report Independent Expenditures in opposition to I-1501.

that the only activity the Foundation said it would engage in related to Initiative 1 was contained on page 7 of the fundraising letter:

The Freedom Foundation has stepped up to lead the fight. We are rallying Olympia Freedom Foundation members, and we've persuaded the City Council to oppose this awful tax. And we will keep exposing the abuse of union members who have been required to fund this injustice, and working to free those employees from the union's grip. And we will be scrutinizing the electioneering effort for violations of the Public Disclosure Act.

I can promise you this: On the day this ballot measure is approved-if, that is, the people of Olympia are conned into passing it-the Freedom Foundation will immediately challenge its constitutionality in court.

No evidence was provided or found that the Freedom Foundation segregated donations received following the August 19 letter into a separate fund from which it intended to sponsor political advertising materials. The Freedom Foundation makes periodic appeals to its supporters to continue its work as a non-profit organization. It appears that the Freedom Foundation's August 19, 2016 fundraising letter highlighted the proposed income tax in the City of Olympia to rally its existing supporters to contribute to the Foundation in support of its overall efforts, which include its ongoing opposition to the imposition of income taxes.

Second Allegation: That even if the Commission does not find that the Foundation is a political committee under the "receiver of contributions" prong, the Foundation violated RCW 42.17A.255 by failing to report its efforts to oppose Initiative 1 as independent expenditures on PDC form C-6.

Mr. Biviano identified several Freedom Foundation efforts that he claimed opposed Initiative 1, and should have been reported on PDC Form C-6 as independent expenditures, as required by RCW 42.17A.255. **(Exhibit 1 Pages 6-7)**

1. Campaign to Generate Opposition to Initiative 1 – The Complaint identified a July 11, 2016 email sent by Jami Lund, Senior Policy Analyst at the Freedom Foundation, urging an individual to join him in testifying against Initiative 1 at the July 12 Olympia City Council meeting.
2. Blog Posts, Podcasts, and Related Website and Print Communications – The Complaint described a communication and outreach program opposing Initiative 1 that included blog posts, podcasts, press releases, and articles on the Foundation's website and in printed materials. Examples included: a 7/14/16 posting titled, "Olympia Income Tax;" a press release posted 8/11/16; an 8/25/16 post titled, "Olympia city income tax scheme rejected;" and podcasts discussing Initiative 1 on 5/7/16, 5/21/16, and 7/16/16.
3. Press Outreach and Preparation of Opinion Editorial in The Olympian – The Complaint states that the Freedom Foundation engaged in an active press outreach program to seek press coverage of its opposition to Initiative 1. It stated that Foundation staff engaged in press interviews and briefings that opposed Initiative 1. Amber Gunn, a Foundation staff person, submitted an opinion editorial to The Olympian in opposition to Initiative 1.

4. Consultation with City of Olympia staff – The Complaint identified several email exchanges between Freedom Foundation staff and the Olympia City Attorney. The Complaint noted that these email exchanges demonstrated an interest in keeping Initiative 1 off the ballot or helping the City oppose the measure.
5. Testimony before Olympia City Council and filing Amicus Brief – The Complaint stated that on July 12, 2016, Freedom Foundation Senior Policy Analyst Jami Lund testified before the Olympia City Council in opposition to Initiative 1. In addition, the Freedom Foundation filed an Amicus Brief in a lawsuit brought by the City of Olympia seeking to invalidate Initiative 1.

In responding to the complaint on behalf of the Freedom Foundation, Mr. Overstreet stated that the Complaint's allegation that the Freedom Foundation failed to report as independent expenditures staff time it expended concerning the Olympia income tax matter, wrongly presumes that the Foundation engaged in political advertising opposing Initiative 1. **(Exhibit 2, Page 3)**

Mr. Overstreet correctly stated that RCW 42.17A.255 defines an independent expenditure as "any expenditure that is made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, .235, and .240." However, he then incorrectly concluded that all independent expenditures are communications that convey political advertising.⁵ It appears he has concluded that the definition of independent expenditure in RCW 42.17A.005(26), which relates to expenditures supporting or opposing candidates and includes a requirement that an independent expenditure meet the definition of political advertising, also applies to independent expenditures in ballot measure campaigns required to be reported in accordance with RCW 42.17A.255. However, independent expenditures that support or oppose ballot propositions and are reportable under RCW 42.17A.255 are not required to meet the definition of political advertising to be reportable. Thus, the value of staff time and related expenses supporting or opposing a ballot proposition is reportable on a C-6 report as an independent expenditure if the staff time and related expenses are valued at \$100 or more.

Mr. Overstreet, quoting from the definition of political advertising, stated that none of the Foundation expenditures complained about directly or indirectly appealed for votes or for financial or other support or opposition in the Initiative 1 election campaign. However, the criteria for reporting under RCW 42.17A.255 is that the expenditure support or oppose a ballot proposition and be valued at \$100 or more. He stated that the Foundation opposed the proposed income tax as an issue of policy concern, but did not advocate that voters vote for or against Initiative 1, and thus did not make independent expenditures reportable on Form C-6.

Mr. Overstreet responded to the five categories of alleged reportable activities as follows:
(Exhibit 2, Pages 4-6)

1. Campaign to Generate Opposition to Initiative 1 - The Foundation stated that no ballot proposition existed on July 11, 2016, the date of Jami Lund's email inviting others to

⁵ "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

testify in opposition to Initiative 1, because the Olympia City Council had not made a decision about whether to adopt its own resolution regarding an income tax. The Foundation concluded that because no ballot proposition existed, the email invitation could not be construed as an appeal for votes or money. PDC staff contends that a ballot proposition existed as early as April 2016, when OFO began gathering signatures, and certainly by July 6, 2016 when OFO turned in its signatures to the City of Olympia.

2. Blog Posts, Podcasts, and Related Website and Print Communications – Mr. Overstreet states that like the Lund email, none of the Foundation’s blog posts, podcasts, or related website and print communications identified in the Complaint show the existence of an independent expenditure because they do not appeal for a vote against Initiative 1 or seek money for a campaign. This analysis is based on the definition of an independent expenditure for candidate campaigns rather than for a ballot measure campaign. The correct standard is whether the activity supported or opposed a ballot proposition, and had a value of \$100 or more.
3. Press Outreach and Preparation of Opinion Editorial in The Olympian – Mr. Overstreet argued that Mr. Lund was interviewed by The Olympian before the September 2, 2016 Court of Appeals order to put Initiative 1 on the ballot. He also argued that Mr. Lund’s comments do not invite readers to vote any particular way, but raise policy questions about the City’s priorities. He stated that the Foundation’s May 26, 2016 editorial, written by Amber Gunn, addressed the legality of an income tax long before signatures were gathered and submitted to the City. Mr. Overstreet again argues that the cost of producing the op-ed is not reportable because it does not appeal for votes for financial opposition to Initiative 1.
4. Consultation with City of Olympia staff – Mr. Overstreet stated that to characterize the several email exchanges between Freedom Foundation staff and the Olympia City Attorney as independent expenditures is absurd. He noted that the emails were about the dates and times of court hearings in the City’s lawsuit against the sponsor of Initiative 1, and to seek an answer to a question about a City statement reported in the news. Mr. Overstreet reiterated his objection to these email communications being described as independent expenditures in opposition to Initiative 1.
5. Testimony before Olympia City Council and filing Amicus Brief – Mr. Overstreet stated that Mr. Lund testified before the Olympia City Council that the income tax proposals being considered were unconstitutional, and that the Foundation would likely engage legally to have the tax invalidated if it became law. Mr. Overstreet also stated that the Freedom Foundation submitted a very short amicus brief to Thurston County Superior Court supporting the City’s legal position regarding Initiative 1. He stated that the brief did not appeal for votes or financial opposition to Initiative 1.

Mr. Overstreet also provided a relevant timeline of activities. (**Exhibit 2, Page 7**)

III. Summary of Conclusions

Political Committee under the Receiver of Contributions Prong - A review of Mr. Biviano’s January 6, 2017 Complaint, and documentation provided by the Freedom Foundation, did not show evidence that the Foundation met the definition of a political committee by being a

“receiver of contributions” in support of or in opposition to candidates or ballot propositions. While an August 19, 2016 fundraising letter from Freedom Foundation CEO Tom McCabe spoke repeatedly about the Foundation’s opposition to an income tax, and specifically about its opposition to the proposed City of Olympia income tax, it appeared that the income tax issue was used in the 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 Expenditures – A review of the evidence showed that the Freedom Foundation engaged in multiple activities that were calculated to oppose Initiative 1. The Foundation did not make expenditures to oppose the initiative by sponsoring political advertising, but it did devote resources to oppose Initiative 1 that were reportable on C-6 reports.

IV. Recommendation

For the reasons described above, staff recommends that:

For the Freedom Foundation, Case 14633, the Commission find there is no apparent violation concerning the allegation that the Freedom Foundation failed to register and report as a political committee under of RCW 42.17A.205, .235 and .240 because it was a “receiver of contributions” to oppose Initiative 1, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

For the Freedom Foundation, Case 14633, the Commission find multiple apparent violations of RCW 42.17A.255 for the Foundation’s failure to report as independent expenditures the value of staff time and related expenses to engage in multiple activities that opposed Initiative 1, and recommend to the Washington Attorney General that that office take appropriate legal action to address the apparent violations.

Investigative Review Exhibits

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| Exhibit 1 | Andrew Biviano, Founding Member of the Northwest Accountability Project, January 6, 2017 Citizen Action Complaint |
| Exhibit 2 | Response to Complaint from Greg Overstreet on behalf of the Freedom Foundation |
| Exhibit 3 | Recommendation Letter to Attorney General’s Office and Executive Summary and Staff Analysis, PDC Case 8336, 45-day Citizen Action Complaint Filed August 30, 2016 Against the Freedom Foundation |

Johnson, Kelsi (ATG)

From: ATG MI CFU Matters
To: Dalton, Linda A. (ATG)
Subject: RE: Complaint Attached

From: Peter Starzynski [<mailto:peter@nwaccountabilityproject.com>]
Sent: Tuesday, January 10, 2017 7:45 PM
To: Dalton, Linda A. (ATG); Smith, Walter (ATG)
Subject: Complaint Attached

Dear Ms. Dalton and Mr. Smith,

On behalf of Andrew Biviano, please find attached a cover letter and complaint to bring your attention to an apparent violations of RCW 42.17A by the Evergreen Freedom Foundation d/b/a the Freedom Foundation.

We are happy to answer any questions you may have.

Sincerely,

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Peter Starzynski
Executive Director
Northwest Accountability Project



Mr. Bob Ferguson
Attorney General, State of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

January 6, 2017

Mr. Jon Tunheim
Thurston County Prosecuting Attorney
2000 Lakeridge Dr. S.W.
Building 2
Olympia, WA 98502

Re: Notice of Violations of RCW 42.17A

Dear Mr. Ferguson and Mr. Tunheim:

This letter and the attached complaint are being submitted by our organization to bring your attention to the apparent violations of RCW 42.17A by the Evergreen Freedom Foundation, d/b/a the Freedom Foundation. The violations alleged in this complaint are evidenced by the attachments included and provide reason to believe the Freedom Foundation disregarded several provisions of 42.17A with respect to their activities leading up to the general election in November 2016. Please consider this letter our 45-day notice pursuant to RCW 42.17A.765(4).

By filing this complaint I certify under penalty of perjury under the laws of the State of Washington that information provided within this complaint is true and correct to the best of my knowledge and belief. In the attached complaint, we have described the allegations and attached evidence to support the claims made in this complaint.

Thank you for your prompt attention to this matter,

A handwritten signature in cursive script, reading "Andrew Biviano".

Andrew Biviano
Founding Member
Northwest Accountability Project
509-309-8071
info@nwaccountabilityproject.com

COMPLAINT

This complaint is filed by the Northwest Accountability Project against the Evergreen Freedom Foundation (“Freedom Foundation” or “Respondent”). It is based on the Freedom Foundation’s failure to register as a political committee as well as its failure to report its expenditures regarding Initiative 1, an Olympia, Washington ballot measure pertaining to the adoption of an income tax to fund a college grant program in that city.

RESPONDENT: The Evergreen Freedom Foundation, www.freedomfoundation.com. Mailing address: P.O. Box 552, Olympia, WA 98507.

ALLEGED VIOLATIONS: Respondent solicited funds and made expenditures for the purpose of engaging in activities and public communications opposing Initiative 1, a measure that appeared on the November 8, 2016 ballot to establish a college grant program in Olympia Washington, to be funded by an income tax.¹

Respondent funded its activities and public communications in opposition to Initiative 1 without registering a political committee and without filing any disclosure reports. This failure to register and failure to report are both in violation of Washington law. Further, given that Respondent has committed similar reporting violations in a recent ballot initiative campaign, the violations concerning Initiative 1 are appropriate for referral to the Attorney General.²

ANALYSIS OF STATUTORY AND REGULATORY PROVISIONS:

I. The Freedom Foundation failed to register as a political committee and to file disclosure reports as required by Washington law.

The Freedom Foundation’s activities and communications in opposition to Initiative 1 required it to register as a political committee. Under Washington law, political committee status applies to “... any person ... having the expectation of receiving contributions...in support of, or opposition to ... any ballot proposition.” An entity that meets the definition of “political committee” must file a statement of organization no later than two weeks after the date the committee first has the expectation of receiving contributions. RCW 42.17A.005(37), 42.17A.205. The Washington Public Disclosure Commission (“PDC”) has interpreted this requirement and provided an analysis of case law dealing with this definition in PDC Interpretation No. 07-02, quoting the holding in *State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass'n*, 49 P.3d 894, 902-03 (2002):

¹ The initiative was voted on and rejected in that election.

² The Freedom Foundation has been put on notice that disclosure is required since the Attorney General has filed suit against the organization based on its failure to file Form C-6 reports to disclose its expenditures in opposition to I-1501 and the Public Disclosure Commission has issued a determination that those reports were required. *State of Washington v. Evergreen Freedom Foundation*, PDC Report of Investigation In Re Compliance with RCW 42.17A, Freedom Foundation, Respondent, PDC Case Number 8336 (Oct 12, 2016).

The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements.... [A] person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.

This Interpretation clearly establishes that political committee status is triggered solely by contribution solicitation, which is equivalent to "expecting to receive" contributions.³ There is evidence that the Freedom Foundation specifically solicited funds to oppose Initiative 1. Mr. Tom McCabe, CEO of the Freedom Foundation, sent out a letter soliciting contributions to oppose Initiative 1, as is shown by his August 19, 2016 fundraising letter stating:

Right now, we're locked in a crucial fight right here in our hometown – and we need you on our team if we're to prevail! ... If Olympia adopts an income tax,...then the rest of the state will follow....Your gift today of \$5,000, \$1,000, \$500, \$250, \$100 or whatever you can afford will greatly help the Freedom Foundation as we make our stand against those who would saddle Washington with an income tax... P.P.S. Your donation today can prevent a statewide income tax tomorrow. Please give as generously as you can. We will fight the imposition of an income tax tooth and nail – and with you on our team, we will prevail. (See Attachment 1.)

As McCabe states, the Freedom Foundation was "out there from the very beginning to make the case to stop the Olympia income tax," *Id.* at 4, and continued to "mobilize conservatives in the area" and kept "educating the public about this crucial issue," *Id.* at 5. It was in furtherance of these efforts that McCabe makes his pitch to contributors: "And with your continued help, we won't. We can stop this monstrosity known as a state income tax." *Id.* at 7. He calls for contributions and makes clear that the money raised will be used to oppose Initiative 1, an Olympia ballot proposition.

It is clear from reviewing this letter both in part, and in its entirety, that the funds being solicited by McCabe are clearly being solicited to fund expenditures in opposition to Initiative 1. Based on the above solicitation, the Freedom Foundation met the legal standard for triggering political committee status under Washington law and as such should have registered by filing a statement of organization with Washington Public Disclosure Commission. RCW 42.17A.005(37), 42.17A.205.

³ Note that in the *Evergreen* case, the Court interpreted the expenditure prong of the political committee definition at RCW 42.17A.005(37) as applying only to organizations whose primary purpose is to influence elections. This primary purpose test applies solely to the expenditure prong of the statutory definition and does not apply to the contribution prong of that definition. The practical implication of this interpretation is to establish that for-profit corporations that make political contributions are not required to register as a political committee because their primary purpose is not electoral activity. Thus, as is permissible in Washington, a for-profit corporation could make a contribution to a PAC, but not be required to register because the primary purpose of that corporation is to market services or products and make a profit. However, entities that solicit and raise contributions for electoral activity immediately trigger political committee status.

II. Even if the PDC does not determine that the Freedom Foundation is a political committee, the organization was required under RCW 42.17A.255 to file Form C-6 to report its expenditures.

Under RCW 42.17A.255, all independent expenditures regarding Washington ballot initiatives, whether at the municipal or statewide level, made by persons other than political committees must be reported if those expenditures have an aggregate value of \$100 or more. This section defines “independent expenditure” to include any expenditure that is made in support of or in opposition to a “ballot proposition” and that is not otherwise subject to political committee reporting. This regulation clearly applies to any expenditures regarding Initiative 1, as the term “ballot proposition” includes any initiative proposed to be submitted to the voters of the state or any political subdivision, including a municipal corporation. RCW 42.17A.005(4).

The PDC has interpreted RCW 42.17A.255 as broadly requiring reporting of all independent expenditures, concluding that reporting under that provision is triggered by a reportable expenditure in support of or opposition to a ballot proposition with an aggregate value of \$100 or more. The PDC’s conclusions are set forth in a recent report relating to an investigation of the Freedom Foundation for failure to comply with Washington disclosure laws relating to its activities and communications to defeat another initiative, I-1501, a statewide measure that was adopted in the November 2016 election and increases penalties for identity theft and consumer fraud against seniors and other vulnerable citizens. The PDC determined that the reporting requirements of RCW 42.17A.255 are governed by the statutory provision’s own definition of independent expenditure, stating:

It 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 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. PDC Report of Investigation In Re Compliance with RCW 42.17A, Freedom Foundation, Respondent, PDC Case Number 8336, at 5 (Oct 12, 2016).

In its report, the PDC concluded that the Form C-6 reporting encompassed a wide spectrum of expenditures that clearly expressed the Freedom Foundation’s opposition to I-1501. The PDC determined that the paid time of staffers writing and producing communications opposing the initiative as well as amounts spent by the organization to finance appearances before, or meetings with, an editorial board of news outlets in opposition to the Initiative could be subject to C-6 disclosure. PDC Report of Investigation In Re Compliance with RCW 42.17A, Freedom Foundation, Respondent, PDC Case Number 8336, at 5-6 (Oct 12, 2016). Accordingly, similar expenditures made by the Freedom Foundation in opposition to Initiative 1 should also be reviewed to determine if they were otherwise reportable under Washington law.

III. Evidence Demonstrating Expenditures.

The following evidence of activities and communications by the Freedom Foundation clearly demonstrate that significant expenditures were made in opposition to Initiative 1 by the organization. These expenditures were reportable either as political committee expenditures or as expenditures reportable on Form C-6.

1. Campaign to Generate Opposition to Initiative 1

Complainants have obtained a copy of a July 11, 2016 email sent by Jami Lund, Senior Policy Analyst at Freedom Foundation urging an individual to join in testifying against Initiative 1 at the July 12 Olympia City Council meeting. *See* Attachment 2. It is likely that this email was part of a larger campaign by the organization to reach out to the public to generate opposition to Initiative 1. The Freedom Foundation expenditures for paid staffers who worked to generate opposition to Initiative 1 through such communications were reportable, in addition to any other expenditures incurred to further this public outreach and campaign against Initiative 1.

2. Blog Posts, Podcasts, and Related Website and Print Communications

The Freedom Foundation had an extensive communications and outreach program opposing Initiative 1 including blog posts, podcasts, press releases and other articles on its website and in printed materials. Examples include: a July 14, 2016 posting titled “Olympia Income Tax,” *See* Attachment 3; a press release posted on August 11, 2016, *see* Attachment 4; an August 25, 2016 post titled “Olympia city income tax scheme rejected,” *see* Attachment 5; podcasts discussing the Initiative on May 7, May 21, 2016, and July 16, 2016, *see* Attachments 6, 7, and 8 (audio available on the Freedom Foundation website); and an article recently published in the Freedom Foundation newsletter titled “Election Night Recap,” *See* Attachment 9.

3. Press Outreach and Preparation of Opinion Editorial in The Olympian

The Freedom Foundation engaged in an active press outreach program, devoting personnel and other resources to seek press coverage of its opposition to Initiative 1. Paid staff engaged in press interviews and briefings, including for example, a piece in *The Olympian* quoting Mr. Lund. *See* Attachment 10.

In another instance, Freedom Foundation policy fellow Amber Gunn submitted an opinion editorial to *The Olympian* newspaper in opposition to Initiative 1. *See* Attachment 11. It is significant to note that Freedom Foundation communications cited in this complaint discuss this editorial as supporting the organization’s campaign to generate opposition to Initiative 1 and use it to buttress its outreach.

4. Extensive Consultation with Olympia City Staff

Through a Freedom of Information Act request, Complainants obtained a series of email exchanges between Freedom Foundation staff and the City Attorney for Olympia. These emails indicate continued and consistent involvement by the Freedom Foundation in actions related to

the Initiative being placed on the ballot and demonstrate an interest in keeping the Initiative off the ballot or otherwise helping the City to oppose the measure. This is best demonstrated by the words of Freedom Foundation Senior Policy Analyst Jamie Lund: “I’m not an attorney, but in my experience the city could decline to put something on the ballot and let the proponents bring an action. That would be the quickest, most focused effort since it would be over in a matter of months and appeals could be unlikely.” (Attachment 12).

5. Testimony before Olympia City Council

On July 12, Freedom Foundation Senior Policy Analyst Jami Lund testified during the Olympia City Council meeting in opposition to the Initiative. During his testimony, he stated that he represented the Freedom Foundation and that the organization would continue its involvement in the process, including litigation should the measure become law. *See* City Council on 2016-7-12, City of Olympia (July 12, 2016) http://olympia.granicus.com/MediaPlayer.php?view_id=2&clip_id=1567. Accordingly, significant expenditures may have occurred for staff to prepare and present this testimony in opposition to the measure and to monitor and challenge the Initiative’s appearance on the ballot.⁴

CONCLUSION:

The facts included in the above complaint clearly demonstrate that the actions of the Freedom Foundation violated Washington law. The Freedom Foundation solicited and expended funds for the purpose of expressly opposing Initiative 1 without registering as a political committee and without filing any disclosure reports. As such, the PDC should investigate the Freedom Foundation, and it should determine that the organization has, in fact, violated the law.

Thank you for your prompt attention to this matter.

⁴ The Freedom Foundation prepared and filed an Amicus Curiae Brief in a lawsuit seeking to invalidate Initiative 1, *City of Olympia v. Opportunity for Olympia*, No. 16-2-02998-34 9 (Superior Court of Washington for Thurston County). (Attachment 13). The organization obviously incurred expenses for this brief. The activity was electoral in nature as the purpose of the lawsuit was to remove or otherwise impact the presence of the Initiative on the ballot. While certain types of legal services are exempt from the definition of contribution when provided to a political party or candidate committee, this exemption does not appear to be relevant here. RCW 42.17A.005(13)(b)(viii).

Attachment 1



Our mission is to advance individual liberty, free enterprise, and limited, accountable government.
myFreedomFoundation.com

August 19, 2016

Dear [REDACTED]

Don't feed the bears—they always come back for more.

That's true in the woods, and it's especially true of the greedy liberals who run Washington state.

For more than 30 years, the Left has run this state, mismanaging it from one budget crisis to the next.

They clearly can't live within their means and keep blaming people like you and me for not paying enough in taxes. In fact, when Christine Gregoire was governor a few years ago, she said the people of our state just needed to be "educated" about why they should want an income tax.

Does she think we're stupid? Government spending in Washington already works out to about \$5,200 per year for every man, woman and child in the state...and she thinks we need to pay even more?

Of course, the people of our great state are smarter than that—and that's why the income tax has been defeated every time it has been proposed in our state.

You'd think the liberals would get the message by now.

Yet the bear is still hungry, and this time it's back with cubs. And if we don't act now, we'll have a mama grizzly-sized problem on our hands before we know it!

My name is Tom McCabe, and I'm president of the Freedom Foundation in Olympia. Founded in 1991, our 5,000 members across the state represent the most potent force for fighting the big government liberals and their dangerous agenda.

Right now, we're locked in a crucial fight right here in our hometown—and we need you on our team if we're to prevail!



Olympia, WA | Salem, OR
PO Box 552, Olympia, WA 98507 | (360) 956-3482

If you've been following the news, you may have heard that big government liberals have gathered signatures to put a citywide income tax on the November ballot in Olympia.

You may ask, why is a big statewide organization like the Freedom Foundation getting involved with a local-level ballot initiative that affects just one city?

Because we know the liberals' real strategy: Impose an income tax on the residents of the Olympia first, and then, once that's in place, spread the misery statewide.

If they were hoping they could get away with this without much fuss or controversy, they were wrong. The Freedom Foundation hates a state income tax as much as we love this magnificent and beautiful state we share.

We are on this case like the Seahawks defense on a hapless running back.

This latest campaign to separate you from your money began in April, when Opportunity for Olympia, a ridiculously misnamed, union-funded pressure group circulated petitions in favor of imposing an income tax on any Olympia household with an income in excess of \$200,000.

Do you think they'd use that money to put more cops on our streets or make our neighborhoods safer?

No, this is all about greedy, big-government liberals taking care of their own.

In fact, this tax money would go straight into the pockets of teachers' unions under the phony pretext of funding "community college tuition" here in Olympia.

Do you think it's any coincidence that teachers' unions were the single biggest contributor to Gov. Inslee's election campaign a few years ago? This is how the Left keeps itself in power, pushing for new taxes and bigger government staffed by more union members to contribute at election time and begin the cycle all over again.

The income tax has been their Holy Grail since the Washington State Supreme Court ruled it unconstitutional in 1933. Seven times they have tried to enact an income tax since then, and seven times they have been defeated.

Now they're back.

They know that if they can prevail in Olympia, it's only a matter of time until they can expand the size and scope government forever statewide.

That's why our opponents in this fight are so well funded.

In fact, just who was behind this mysterious gang that called itself Opportunity for Olympia? Far and away its biggest benefactor is Nancy Nordhoff, the rich left-wing Seattle funder of Big Government causes. (Just why does a rich lady in Seattle want to tax the incomes of people less fortunate than her in a completely different city, anyway?)

The next largest contributor to Opportunity for Olympia was the Olympia Education Association—the teachers' union. Opportunity? Sure, an opportunity to get their greedy fingers into the wallets and purses of the people of Olympia.

Nothing grows government quite like an income tax—and no one will benefit more from an income tax than the government unions.

City officials flagged the Opportunity for Olympia petition as poorly drawn and probably unconstitutional. So what did these city officials do?

They turned around and wrote an even more inclusive income tax proposal that would impose an income tax on every household in the city.

This graduated income tax would raise \$2.5 million annually, or approximately the same amount that Opportunity for Olympia's proposal would have raised.

Olympia Mayor Pro Tempore Nathaniel Jones, a vocal supporter of the city income tax, used as his excuse the fact that in 2010, voters in Olympia had supported the most recent failed attempt to impose a statewide income tax.

"We've got a community that's actually on fire for this issue," Jones burred.

We'll see just how "on fire" Olympians are when they realize that Jones's proposal, which will be on November's citywide ballot, would force everyone—not just "the rich"—to send their money to him and his cronies for them to dispose of as they see fit.

Opponents of the proposed Olympia income tax were aghast. “This is not about education and our kids,” said Council member Julie Hankins. “This is about someone else coming into our town with their agenda, which is to challenge the state’s tax system”—and pave the way for a statewide income tax.

The cost of implementing this tax—creating a new city bureaucracy responsible for the collection and enforcement of an Olympia income tax—would be astronomical. It would require an effort that is, well, *Olympian*—and far beyond the administrative capabilities of the current city government.

But that doesn’t concern the income tax crowd. **To them, that’s a minor detail, like choosing between the .22 or the .38 caliber on their way to a home invasion.**

As soon as this taxing proposal materialized in Olympia, the Freedom Foundation, your voice for individual liberty, free enterprise and limited, accountable government in the Pacific Northwest, took to the field.

We’ve been out there from the very beginning to make the case to stop the Olympia income tax, and we’re winning the debate.

In fact, Freedom Foundation economic policy analyst Amber Gunn exposed the income tax con job for what it is in a powerful editorial in *The Olympian*. (Amber’s column is enclosed with this letter.)

As Amber reveals, the campaign to tax incomes in Olympia has grave consequences even for those who do not live in Olympia.

The ultimate goal of the Olympia income taxers is to con enough people in a test city to enact a local income tax. Their hope is that the Washington Supreme Court will then reverse 80 years of precedent and approve the tax, opening the way to a statewide income tax that does not require approval by those pesky voters.

The state Legislature could then pass an income tax on its own—and you can bet the unions would break the bank to buy enough legislators to pass such a tax.

Amber Gunn’s concluding words ought to be pinned to the wall of every decision-maker in our state:

“As Washington residents, we need to protect one of our most precious competitive advantages in tax policy: no income tax. In almost every other category our state is very expensive for business owners and wealth producers. The way we keep the welcome mat out for them is by stopping an income tax.”

You and I understand this truth. Our job is to inform our neighbors and fellow Washingtonians of the wide-ranging and wholly pernicious consequences of an income tax—first in Olympia, and then across our state.

The comments from readers on Amber’s hard-hitting article were enlightening.

- “Government never has enough money.”
- “Modern-day voters in Washington understand that all these liberal Democrats want to do is take our \$\$\$\$. Once they pass a tax like this it seems to get a life of its own. It will expand into other households and start to grow and grow and grow.”
- “I can say with great certainty that if they pass this, my family will move out of Olympia after being residents for over 25 years.”

The real agenda here, as one astute commenter noted, is a statewide income tax.

We’re getting that message out, and we’re winning the debate.

In fact, in the wake of Amber’s *Olympian* editorial and our efforts to mobilize conservatives in the area, the Olympia City Council voted to oppose the tax and sue to keep it off the ballot if necessary.

That’s a huge battle to have won.

But the war is far from over—we all know that the liberals have a friend in our unaccountable judges, and we have to keep up the fight.

For our part, we will keep educating the public about this crucial issue—and if it does pass in November, **we have the state’s largest and most effective team of conservative lawyers standing ready on our staff to continue the fight as long as needed.**

Don’t believe for one second the crooked liberals who claim that any statewide income tax would be targeted only at those with incomes above \$200,000. **It will be voracious and omnivorous.**

I said it before, and I'll say it again: don't feed the bear!

Let's be frank. The unions and the political hacks whose elections they subsidize don't care if hard-working citizens are punished by an income tax—just as long as the proceeds of that tax fill the coffers of the unions and help to re-elect the hacks.

They prey on people like our friends and neighbors, using the loot to feather the nests of privileged union bosses and keep themselves in power. For the less fortunate in our communities who need every penny from their paycheck to climb their way out of poverty, an injustice like this can mean the difference between making ends meet and going hungry, homeless or worse.

We just can't let that happen—we have to stand up for our neighbors and our communities, and defeat the income tax and the powerful forces behind it.

It's no surprise the biggest bankrollers of the Olympia income tax are a Seattle Big Government liberal and the teachers' union.

The forces of the unquenchable state have designs on *your* money and *your* liberties. They think they've hit upon the winning strategy.

You see, the Olympia income tax is a Trojan Horse. How do we know this? Because we're seeing the same strategy play out in a related issue.

The unions and their statist allies are following the same cynical game plan as they did in pushing the job-killing minimum wage hike.

Once they got their way in SeaTac—thereby removing the traditional first rung of the ladder of success and condemning untold thousands of inexperienced SeaTac workers to idleness and the dole—they set their sights on killing jobs at the statewide level.

And that's where we find ourselves in 2016. In fact, voters in Washington may face on this November's ballot a union-backed initiative raising the minimum wage in every region, every town, every corner and on every job in the state.

I can guarantee that if a statewide minimum wage of as much as \$15 an hour passes, Washington's unemployment rate will begin an inexorable rise. Restaurants will close. Automation will replace workers.

It will be a disaster.

Liberal activists are following the same script with the income tax.

If Olympia adopts an income tax, goes the thinking of the unions and their allies, then the rest of the state will follow.

Imagine that: Every April 15, you can write out *two* checks: one to the IRS, and the other to the state of Washington's mini-IRS.

We cannot let this happen.

And with your continued help, we won't. We can stop this monstrosity known as a state income tax.

The effect of a state income tax on Washington's economy—not to mention the basic unfairness of taxing work and success—would be devastating.

It's easy to see where this is leading if it is not stopped now. Income tax supporters seem to want to turn Washington into a Pacific Northwest replica of Washington, D.C.

They won't if we—you and I and the patriots of the Freedom Foundation—have anything to say about it.

And we do.

The Freedom Foundation has stepped up to lead the fight. We are rallying Olympia Freedom Foundation members, and we've persuaded the City Council to oppose this awful tax. And we will keep exposing the abuse of union members who have been required to fund this injustice, and working to free those employees from the unions' grip. And we will be scrutinizing the electioneering effort for violations of the Public Disclosure Act.

I can promise you this: On the day this ballot measure is approved—if, that is, the people of Olympia are conned into passing it—the Freedom Foundation will immediately challenge its constitutionality in court.

The Freedom Foundation is the major barrier standing between you and a statewide income tax. And we will never—**never**—back down.

Politicians like to say they the people are behind them. But the liberals could have learned something from the comments after another *Olympian* article on the subject:

- “These people should take their political experiments back to Seattle.”
- “It’s a tax that punishes success.”
- “This is a priority? Meanwhile the town is taken over by drug dealers, professional panhandlers, theft, crime. I guess it’s a good distraction from the real issues they refuse to address.”

We at the Freedom Foundation are addressing the real issues in Washington by defending free enterprise and constitutional liberty and fighting the greedy, lawless government unions at every step.

But today we face a new fight.

Your gift today of \$5,000, \$1,000, \$500, \$250, \$100, or whatever you can afford will greatly help the Freedom Foundation as we make our stand against those who would saddle Washington with an income tax.

This is a fight we have to win—and with you on our side, we will.

Sincerely,



Tom McCabe
CEO

P.S. This latest campaign by the greedy union bosses to turn *your* money into *their* money is beginning in the city of Olympia—but their ultimate goal is to rip off every single worker in Washington with an income tax. We have to stop this in its tracks.

P.P.S. Your donation today can prevent a statewide income tax tomorrow. Please give as generously as you can. We will fight the imposition of an income tax tooth and nail—and with you on our team, we will prevail.



We have the plan... we have the tenacity...
and trust me, we have the firepower...

...TO FREE WASHINGTON STATE
FROM THE GRIP OF
**GOVERNMENT
UNION TYRANNY!**

Please join Freedom Foundation's campaign
to bring the Pacific Northwest back from its
hardcore radical politics!



Enclosed is my gift of

\$100 \$250 \$500 \$1,000 \$5,000 other_____

to help the Freedom Foundation at this critical time!

YES, Tom, I want you to continue the fight!

Your gift is tax deductible.

PAYMENT METHOD

☐ Check Enclosed

☐ Credit/Debit Card



CC # _____ Exp. Date _____

CHECKING WITHDRAWAL OR CREDIT/DEBIT CARD DONATION AUTHORIZATION:

I authorize my bank/credit card company to make payment(s) as indicated. I understand I am in full control of my donation, and can make changes by calling or writing the Freedom Foundation.

Signature _____ Date _____

Required for checking withdrawal or credit/debit card donations

Please complete payment information and mail to: **Freedom Foundation - PO Box 552, Olympia, WA 98507**

OLYMPIA INCOME TAX WOULD

OPEN PANDORA'S BOX

BY AMBER GUNN
Special to The Olympian

An income tax test case is brewing in the city of Olympia. On the heels of what many agree is a flawed local income tax petition, the Olympia City Council is drafting its own ordinance to become the first city in Washington to impose an income tax.

The original income tax petition, backed by the Economic Opportunity Institute, would exact a 1.5 percent tax on household income in excess of \$200,000 and dedicate the revenue to funding one year of higher education for college-bound Olympia residents.

Multiple inconsistencies and flaws have prompted Olympia's City Council to pursue its own income tax



AMBER GUNN

proposal—one some believe will pass the inevitable legal challenge. The council's proposal would place a graduated income tax on all households, rather than just those making more than \$200,000.

While a broader tax base would potentially mitigate tax revenue volatility, it would

not address the problem of taxpayer migration. In Thurston County, some of the wealthiest households live just outside Olympia's city limits. Nothing would prevent the city's high earners from joining them.

By proposing its own amended ordinance, the City Council is sending voters the message that a city income tax is feasible, practical and by implication legal. If the council manages to swindle voters into believing that the hefty expenses to implement and enforce a new tax, which the city is totally unequipped to collect, are trivial, only Washington's Constitution and eight decades of legal precedent would stand in the way.

Olympia is a handpicked test case by income tax

backers. City voters supported a 2010 state income tax initiative that failed statewide. Since extensive statewide strategies have repeatedly flopped, this is the first narrow, concentrated attempt to pass a local income tax—purposely provoking a legal challenge that advocates hope will reach the state Supreme Court, which would then overturn decades of precedent and pave the way for a statewide income tax without a constitutional amendment.

Win or lose, such a legal showdown would leave Olympia's taxpayers footing the bill. If this proposal were truly about paying for higher education

for local residents, supporters would have done what every other municipality does when it wants something—pass a new property or other tax levy, or advocate for a shift in current priorities.

In the end, this proposal is not really about Olympia. This is the classic "lipstick on a pig" scheme to advance the long-term goal of fundamentally changing Washington's tax structure at the expense of the integrity of our state Constitution.

As Washington residents, we need to protect one of our most precious competitive advantages in tax policy: no income tax. In almost every other category our state is very expensive for business owners and wealth producers. The way we keep the welcome mat out for them is by stopping an income tax.

This is the classic "lipstick on a pig" scheme to advance the long-term goal of fundamentally changing Washington's tax structure at the expense of the integrity of our state Constitution.

Amber Gunn is an economic policy fellow with the Freedom Foundation, an Olympia-based free market think tank.

Attachment 2

Email Urging Opposition to Initiative 1

Email Sent to [REDACTED]

On Mon, Jul 11, 2016 at 4:05 PM, Jami Lund <JLund@myfreedomfoundation.com> wrote:

Hello [REDACTED]

Perhaps you have heard that the City of Olympia has been targeted by the union-backed “Economic Opportunity Institute” of Seattle for an experiment to impose a city income tax.

On Friday the activists turned in the signatures to get a city income tax initiative on the November ballot if allowed by the council.

Freedom Foundation has fought on behalf taxpayers for twenty five years, and this scheme is no exception. Not surprisingly, government unions play a key role in this plan to plunder some Olympia citizens to fund public higher education institutions.

Freedom Foundation policy fellow, Amber Gunn, penned an opinion editorial expressing concerns in the Olympian newspaper. The Freedom Foundation is working to educate people about the injustice of unconstitutional selective income harvesting.

But Olympia residents need to make their voice heard, and now is the time. Before this Tuesday, July 12th city council meeting, please contact all city council members regarding this unconstitutional income tax initiative.

Reach them all at once at: citycouncil@ci.olympia.wa.us

Will you send a note to the city council expressing your thoughts about forcing a minority of citizens in Olympia to fund the public college tuition of others?

I am also looking for several to join me at the hearing. Please reply if you would consider lending support on Tuesday evening at 7:00. You can bet that the other side is going to be there.

Jami Lund

Senior Policy Analyst | Freedom Foundation

JLund@myFreedomFoundation.com

[360.956.3482](tel:360.956.3482) | PO Box 552 Olympia, WA 98507

myFreedomFoundation.com

Sent to [REDACTED] because of your interest in the Freedom Foundation's mission of individual liberty, free enterprise and limited, accountable government. Let me know if your preferences about receiving messages like this have changed.

Attachment 3

Olympia Income Tax

[Like 1](#)

July 14, 2016

Jami Lund *Senior Policy Analyst*

Olympia has become the test tube in which Leftist social engineers are conducting their latest experiment.

The union backed "Economic Opportunity Institute" of Seattle was tasked with finding a test case for a statewide income tax and, on July 8, paid canvassers turned in enough signatures to place a city income tax initiative on Olympia's November ballot if approved by the council.

The Freedom Foundation has fought on behalf of taxpayers for 25 years, and this scheme is no exception. Not surprisingly, government unions play a key role in this plan to plunder a handful of Olympia residents to fund public higher education institutions.

Last month, Freedom Foundation policy fellow Amber Gunn authored an opinion editorial for *The Olympian* newspaper expressing concerns. The Freedom Foundation is working to educate people about the injustice of unconstitutional selective income harvesting.

Among the many problems with the proposal are these three:

First, this policy is unfair and immoral.

In its simplest terms, the measure requires the city to send police to take money from some residents and give it to others.

If the designated taxpayers acquired their wealth through unjust methods, say by fraud or theft, then by all means let the force of law be brought to bear. But that's not what is happening here. Instead, those who authored and signed the petition simply believe that those who have more than they do deserve to be punished by having a portion of their wealth confiscated and redistributed to others.

As with most utopian schemes crafted by those who believe government can control human motives and action, this proposal will have negative impacts.

Will targeted taxation motivate the unwelcome to leave? Will free resources encourage irresponsibility in training choices and inflation of the costs of college? Will the government effort to penalizing earning create a greater appetite to grow government programs of this sort? Will injustice be multiplied by flawed

implementation of the city's attempt to decide who owes taxes and why?

Second, it is not a function of city government to create higher education programs.

Cities have clear responsibilities they already struggle to meet within existing revenues infrastructure, public safety, land use, etc.

This proposal obligates the city to create a higher education program that has a number of problems:

1. It duplicates state and federal programs regarding higher education and financial assistance
2. It unfairly discriminates against *private* higher education and training opportunities like the six private vocational training programs in Olympia itself.
3. It decides for city residents that college is "good" and refuses to fund other life preparation or self sufficiency opportunities. For example, a young woman who wants to open a hair salon after getting a license at the New Market Skills Center is *charged a fee* by the city, but a young woman who wants to spend time at college with an undeclared major gets paid.
4. It lacks any meaningful accountability to make sure a public interest is accomplished with the money spent. What if students drop out? Will their chosen studies actually result in self sufficiency? What if they are fully funded through other financial aid programs?

The city of Olympia has a clear scope of responsibility, and funding state institutions of higher education is not one of them.

Third, the initiative is unconstitutional.

Freedom Foundation attorneys are examining this proposal, and we take our defense of liberty and taxpayers seriously.

In an unbroken string of rulings, income taxes have been struck down by the state Supreme Court as a tax on property in violation of other parts of the state constitution (Article 7 section 1 and 2)

Likewise, the state and federal Constitutions require that taxation be uniform. An arbitrary tax on the property of some of the residents of Olympia violates the state Constitution (Article 1 section 12 equal application of laws) and likely the U.S. Constitution (14th Amendment equal protection), as well.

A bad precedent

Why would King County socialism activists invest \$50,000 in a small town initiative to implement these policies?

Perhaps to lay the groundwork for a test case on the constitutionality of an income tax now that the

Washington State Supreme Court seems much more attentive to the interests of government unions.

Perhaps because the news coverage from the state's capitol would help normalize this extreme idea of plundering the few for the benefit of some others.

Perhaps because other cities will, like dominoes falling, get their turn to embrace this radical departure from equal protection of the laws. The precedent was already established with the SeaTac minimum wage initiative.

Next steps

The city of Olympia has heard from Freedom Foundation experts and several local Freedom Foundation members. The city council was planning to introduce an "improved" version of the income tax, but now *The Olympian* reports that it is planning to seek a court ruling that the initiative is unlawful to keep it off the ballot.

This effort makes the importance of local elections and local activism very clear. The Freedom Foundation is fundamentally a grassroots organization, and remains committed to local action. *Local* change and leadership is necessary to turn the tide of Washington away from a culture of individual oppression, government managed economies and big, unaccountable government.

Testimony begins at 39:10

Attachment 4

Press Release: Freedom Foundation Files Brief Addressing Constitutionality Of Proposed Olympia Income Tax

[Like 0](#)

August 11, 2016

Jeff Rhodes *Managing Editor*

OLYMPIA, Wash. — The Freedom Foundation on Tuesday filed an amicus curiae ("friend of the court") brief in support of a lawsuit filed by the city of Olympia against the campaign supporting a ballot initiative that would impose the state's only income tax on local residents.

The initiative, which qualified last month for a spot on the November general election ballot, would tax only residents earning more than \$200,000 to fund college scholarships for needy Olympia students. But the measure's regressive nature puts it at odds with both the Washington State Constitution and several court cases.

"The state constitution is unequivocal — an income tax can't treat people differently such as when a tax kicks in at a certain income level," said Freedom Foundation Managing Attorney Greg Overstreet. "We were concerned that neither the city nor campaign presented legal analysis to the court on the constitutional issues, so we filed a brief that offers a constitutional perspective."

The city of Olympia is simply asking the court to issue an order allowing it to not put the local initiative on the ballot because it violates a state law preventing cities from imposing their own income tax.

The Freedom Foundation's brief, however, cites Article VII, Section I of the Washington State Constitution, which states, "... (all) taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax."

Further, at least three subsequent court challenges have affirmed that a tax cannot be imposed on one group of Washingtonians but not another.

Overstreet said the authors of the Olympia initiative are using the measure as a test case with an eye toward imposing a statewide tax in the future. But two obstacles stand in their way — the voters and the law.

"People seldom vote to tax themselves," he said, "but they can sometimes be persuaded tax someone else

like 'evil rich people.' A Washington income tax is clearly unconstitutional unless it's a true flat tax on all income, which the proposed Olympia initiative certainly is not."

The case is scheduled to be heard by Judge Mary Sue Wilson in Thurston County Superior Court on Aug. 25.

Attachment 5

Olympia City Income Tax Scheme Rejected

[Like 0](#)

August 25, 2016

Jami Lund *Senior Policy Analyst*

In a classic example of the importance of local activism, a Socialism experiment funded by Leftists is now unlikely to appear on the general election ballot in Olympia this fall.

The Freedom Foundation has a 25 year history as the state's foremost grassroots taxpayer advocacy organization. When the union funded champions of Socialism, the Economic Opportunity Institute, decided to experiment on Olympians by trying to get one of their pet ideas on the ballot, the Freedom Foundation's citizen activists were key to blocking them.

The Seattle based Economic Opportunity Institute's donors and personnel created an initiative to take money from a few wealthy individuals in Olympia and to give it to government run colleges to cover costs of tuition for Olympia youth.

Freedom Foundation's Amber Gunn wrote an opinion editorial for the Olympian newspaper raising the alarm about this unfair and unconstitutional policy.

Government unions tapped their members to help fund the effort to gather signatures.

Once the petition was offered to the Olympia City Council, however, Freedom Foundation members in the area wrote to their city council, spoke at the hearing and wrote letters to the editor.

City councilmembers, who were tentatively in favor of the opportunity to lead the state in wealth redistribution, ultimately decided instead to ask the court to prevent the proposal from being placed on the ballot.

The Freedom Foundation legal team then filed a brief noting the ways the proposal violated constitutional protections intended to protect taxpayers from this kind of selective persecution. Of course, the union funded campaign has argued "(the) Freedom Foundation's amicus brief should be rejected."

On Aug. 24, Thurston County Superior Court ruled the initiative extends beyond the city's powers and conflicts with the state law that bans income taxes, and will prevent it from appearing on the ballot.

Of course, the income tax advocates will seek an emergency appeal, but the likelihood of success is waning.

The Freedom Foundation members' action coupled with our great legal team has demonstrated that local activism works even in Olympia, a city considerably to the Left of most of Washington.

Related:

Olympia Income Tax?

Freedom Weekly Radio: Potential Lawsuit If Olympia Income Tax Passes

Freedom Weekly Radio: Proposed Income Tax in Olympia

Press Release: Freedom Foundation Files Brief Addressing Constitutionality Of Proposed Olympia Income Tax

Attachment 6

Freedom Weekly: Washington May 7, 2016 - Proposed Income Tax in Olympia

[Like 0](#)

May 7, 2016

Jeff Rhodes *Managing Editor*

Managing editor Jeff Rhodes discusses Olympia's proposed income tax with Economic Policy Fellow Amber Gunn and reviews a U.S. Supreme Court ruling about Seattle's minimum wage law with retired Washington State Supreme Court Justice Jim Johnson.

Listen to the show:



Attachment 7

Freedom Weekly: Washington May 21, 2016 - Freedom Foundation Wins Another Lawsuit

[Like 0](#)

May 21, 2016

Jeff Rhodes *Managing Editor*

Managing editor Jeff Rhodes and retired Washington State Supreme Court Justice Jim Johnson discuss the legal and constitutional implications of Olympia's proposed income tax ballot initiative, and General Counsel James Abernathy talks about a major win last week in Superior Court for the Freedom Foundation, as well as a new lawsuit filed this week in federal court.

Listen to the show:



Attachment 8

Freedom Weekly: Washington July 16, 2016 - Potential Lawsuit If Olympia Income Tax Passes

[Like 0](#)

July 16, 2016

Jeff Rhodes *Managing Editor*

Managing editor Jeff Rhodes and senior policy analyst Jami Lund discuss his appearance at an Olympia City Council meeting this week, informing the members that the Freedom Foundation would consider filing a lawsuit over a ballot measure that would impose a city income tax.

Listen to the show:



Attachment 9

ELECTION NIGHT V

BIG LABOR POURED MILLIONS INTO WASHINGTON, OREGON RACES ... AND EVEN ITS SIGNATURE

WASHINGTON CONTINUES TO REJECT TAXES IT'S ACTUALLY INFORMED OF

While the national election results produced gains for the cause of limited, accountable government, the state election leaves Washington as stagnated as before.

Which is far from the worst outcome if you count yourself among those suspicious of government's scope and dismissive of its ability to improve anyone's situation.

The Washington State Senate remains in a narrow Republican control, while the Democrats' control of the House of Representatives is just as tenuous.

Statewide officials are primarily Democrat with the exception being the Republicans adding Treasurer Duane Davidson to incumbent Secretary of State Kim Wyman.

While the makeup of the state Legislature and statewide offices changed very little this year, millions of union-confiscated dollars were required to prop up politicians who never could have generated that kind of money relying on voluntary donors.

Meanwhile, the Washington State Supreme Court has grown so political that it now offers union-written rulings on demand along with attempts to



By **JAMI LUND**,
Senior Policy Analyst

As the state's most active taxpayer advocate, the Freedom Foundation is heartened by these results.

SEIU 775 in effect bought a law giving the union – and only the union – the right to communicate with unionized home healthcare and childcare providers. The price tag of this law was \$1.8 million in reported expenditures.

Freedom Foundation will be taking action to strike down this law. The initiative has three serious legal flaws that will be the basis of our lawsuit:

- I-1501 is a textbook abuse of the “single-subject” rule. The

encroach on legislative responsibilities.

This year, serious challengers attempted to unseat the three incumbents.

After tens of thousands of unions dollars were spent, the incumbents remain on the court.

Leftist forces are attempting to break down our currently tax system so they can use taxes as a weapon to "even the score" by targeted redistribution.

Yet despite enthusiastic support for candidates and causes who make no secret of their desire to wield such a weapon, Washingtonians once again showed they had no interest in raising taxes – even those imposed on someone else.

Initiative 1464, for example, was a campaign finance measure that would have eliminated the sales tax exemption for out-of-state purchasers of Washington good.

It was handily defeated.

Likewise, Initiative 732 – which would have imposed a carbon tax on those the governor wishes to punish for pushing back at his radical environmental agenda – was inexplicably sent to the voters with the word "tax" in the title, and it received the lowest number of votes of all the measures.

The two "advisory votes" allow the public gets to pass symbolic judgment on the tax- or revenue-increasing actions of the Legislature.

Sixty to 70 percent of citizens rendered a "repeal" advisory opinion.

In liberal Olympia, a community known for its addiction to big government, was unwilling to pass an income tax measure even after the court helped obscure the measure's true intent.

The initiative would have taxed residents whose income exceeded \$200,000 a year and used the revenue to fund college scholarships for needy students.

Even Olympia residents recognized it was nothing but a wealth-redistribution scheme hatched by the Economic Opportunity Institute, a labor-funded group from Seattle, whose goal was a create a test case they could take to the union-owned Supreme Court in hopes it would declare a state income tax legal.

When campaign officials feared Washington residents would resist any suggestion of an income tax – as they have done on countless occasions in the state's history – a Thurston County judge obligingly removed any references to taxes from the title of the city initiative, henceforth known as "Proposition 1."

And yet the measure was defeated with a 55 percent no vote in spite of a \$239,000 campaign (\$23 per "yes" vote).

The Freedom Foundation published concerns in The Olympian, testified with members in opposition and threatened to sue if the initiative was passed by voters. Fortunately, it was not.

measure lures voters in by promising to do one thing – protect seniors – but its true intent is something entirely different – protecting SEIU. This sort of bait-and-switch is the whole reason the single-subject rule was adopted in the first place.

• I-1501 violates the First Amendment because the Freedom Foundation's outreach to union members is political speech and 1501 was passed specifically to prevent that speech.

• It also violates the Equal Protection clause of the U.S. Constitution because it allows the unions to obtain the lists (and can speak to union members) while no one else can.

The bad news for the unions, however, is that while they were wasting millions trying to trick voters into keeping 40,000 Washington workers in the dark about their constitutional rights, Donald Trump was unexpectedly defeating Hillary Clinton for the presidency.

An outspoken supporter of right-to-work laws, Trump will now be the one to put forth a nominee for the U.S. Supreme Court to replace Antonin Scalia, who died last spring just weeks after hearing a case that would have allowed every government employee to decide whether or not to pay union dues or fees.

There are several similar cases in the pipeline the newly reconfigured court could consider. Or even more directly, with GOP majorities in both houses of Congress and a Republican in the White House, a national right-to-work law could be passed with minimal effort.

All in all, Election Night 2016 saw a handful of small victories for the unions – most of which can be effectively blunted by the one huge election defeat no one saw coming.

Attachment 10

LOCAL

AUGUST 20, 2016 12:06 PM

Olympia tax proposal's college tuition fund echoes Kalamazoo Promise



BY ANDY HOBBS
ahobbs@theolympian.com

A controversial proposal to establish an income tax in Olympia will go before a judge Wednesday to determine whether the initiative is legally valid for the November election — or any election, for that matter.

A Thurston County Superior Court hearing has been scheduled with representatives from the city and Opportunity for Olympia, a group that collected thousands of signatures from local residents who support the ballot initiative, which is unprecedented in Washington.

The proposal calls for a 1.5 percent tax on Olympia households with income that exceeds \$200,000 to raise about \$3 million a year for a public college tuition fund. If it passes and is considered valid, voters would create the first local income tax in a state that has long prohibited an income tax.

City officials say the initiative is flawed and cannot survive an inevitable legal challenge. However, the Olympia City Council is bound by law to send the initiative to voters following certification of signatures by the county.

The council, which tried unsuccessfully to pursue an alternative to the initiative, has now forced a court battle to determine whether the city has the constitutional power to tax residents.

City Attorney Mark Barber told The Olympian that he “would not be surprised” if the judge delivered a decision from the bench after hearing both sides’ arguments.

The public debate over the initiative focuses on two points: Should Olympia lead an experiment that challenges the state’s regressive tax system — where lower-income people pay a larger share of taxes than their wealthier counterparts — and should the city play a role in helping students cover the cost of higher education?

According to the initiative, every public high school graduate or GED recipient living in Olympia city limits would be eligible for financial assistance that would cover the first year of tuition at any community college or an equivalent amount at any public university in Washington.

Larry Mosqueda, a retired political economy professor at The Evergreen State College, refers to the initiative’s education component as an important social investment for the city. He echoed a report by the Census Bureau that found people with a bachelor’s degree will earn nearly \$1 million more during a lifetime than those with only a high school diploma.

While the Opportunity for Olympia initiative wouldn’t cover the entire college tuition bill, it can bring more people into an accredited higher education system who might not have done so otherwise, Mosqueda said.

“A better-educated community would be a better tax revenue base,” he said. “The city will be better off in the long run.”

Jami Lund, a senior policy analyst for conservative think tank the Freedom Foundation, said the state already offers plenty of need-based and merit-based grants for college students. A city-run college tuition program would be redundant and falls outside the city's duties, he said.

Lund also said an Olympia college tuition fund fails to consider private college options or even private vocational programs, such as training to earn a commercial driver's license.

"Let's pretend you did adopt an income tax. Is this something you would use it for?" said Lund, noting that city government could have different priorities. "It might be cool, but is it in the city's wheelhouse?"

KALAMAZOO PROMISE

In southwest Michigan, the city of Kalamazoo — population 74,200 — has established one of the more well-known college scholarship funds for local graduates.

The Kalamazoo Promise was launched in 2005 and funded by anonymous donors to provide tuition assistance for graduates of Kalamazoo Public Schools. Students who were continuously enrolled in the district for at least four years of high school can qualify, and the money is good for any public college or university in Michigan.

Beginning with the class of 2015, the Kalamazoo Promise could be applied to private colleges; in this case, the program will cover the equivalent of the tuition and fees at the University of Michigan, the state's most expensive public university.

Those who complete grades nine through 12 are eligible for a grant worth 65 percent of tuition, while those who complete their entire school career in Kalamazoo — from kindergarten through graduation — are eligible for a 100 percent tuition grant.

The program was established in response to declining enrollment in the district. Since its launch in 2005, the Kalamazoo Promise has reversed the trend from a low point of 10,000 students in 2005 to nearly 12,500 students over the following decade, according to a 2015 report by the W.E. Upjohn Institute for Employment Research. Today's numbers are similar to enrollment in the late 1980s.

The program also is credited for a 34 percent increase in students enrolling in a four-year college, according to the report, and a 12 percent increase in students earning a postsecondary credential or degree within six years of high school graduation.

By the end of 2014, the Kalamazoo Promise had paid nearly \$61 million in total scholarships since the program began, spending an average of about \$4,000 per student per semester.

“The Kalamazoo community and (school district) have used the Promise to encourage a more college-going culture among parents and students,” according to the report. “As one might expect, ‘free’ college is insufficient by itself to ensure higher skill levels through postsecondary education. Other policies prior to age 18 are likely needed to improve outcomes for more students.”

The report concludes: “Simple and generous scholarship programs have the potential of being a cost-effective component of the policy toolbox to increase the educational attainment of American students.”

STATE COLLEGE TUITION

The estimated tuition and fees for large schools, such as University of Washington and Washington State University, is about \$10,000 a year, according to the Washington Student Achievement Council. Smaller four-year schools, such as The Evergreen State College and Western Washington University, average about \$6,500 a year, while community and technical colleges average about \$3,850.

The state Education Research and Data Center reports about 110,000 Washington undergraduate students in 2012 — almost 1 in 3 students — received a need-based Pell Grant, a federal subsidy that does not require repayment. That marks a 56 percent increase from 2009.

The center also reports that about 46 percent of all the state’s undergraduate students received some sort of grant in 2012, with the average at \$8,550.

Washington also provides State Need Grants and College Bound Scholarships based on a family’s income level. The Washington State Institute for Public Policy evaluated the effectiveness of the State Need Grant Program, which served about 74,000 students in 2012 with a total expenditure of about \$303 million.

“We find that for students with the lowest family incomes, receipt of State Need Grants is associated with higher re-enrollment and completion rates,” according to the report.

But the report noted that about 32,400 students who were eligible for the grant in 2012 did not receive it because of lack of funding.

2015

The Effects of the Kalamazoo Promise Scholarship on College Enrollment, Persistence, and Completion

Timothy J. Bartik
W.E. Upjohn Institute, bartik@upjohn.org

Brad J. Hershbein
W.E. Upjohn Institute, hershbein@upjohn.org

Marta Lachowska

Kalamazoo Promise by Andy Hobbs, on Scribd

Andy Hobbs: 360-704-6869

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COMMENTS

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Spike LJ Blutarski

The difference is that Kalamazoo was funded by anonymous donors and Olympia is a tax. There are plenty of merit and need based scholarships available to all. A college education is not a right, it is a privelege, meant to be earned, not 'given'.

Like · Reply · Aug 22, 2016 8:24am

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Attachment 11

MAY 26, 2016 6:46 PM

Olympia income tax would open Pandora's box



Advocates have filed an initiative to impose a legally questionable city-only income tax
Members of the Olympia City Council are also drafting their own ordinance
The measure could drive wealthy households to move out of the city

BY AMBER GUNN *Special to The Olympian*

An income tax test case is brewing in the city of Olympia. On the heels of what many agree is a flawed local income tax petition, the Olympia City Council is drafting its own ordinance to become the first city in Washington to impose an income tax.

The original income tax petition, backed by the Economic Opportunity Institute, would exact a 1.5 percent tax on household income in excess of \$200,000 and dedicate the revenue to funding one year of higher education for college-bound Olympia residents.

Multiple inconsistencies and flaws have prompted Olympia's City Council to pursue its own income tax proposal — one some believe will pass the inevitable legal challenge. The council's proposal would place a graduated income tax on all households, rather than just those making more than \$200,000.

While a broader tax base would potentially mitigate tax revenue volatility, it would not address the problem of taxpayer migration. In Thurston County, some of the wealthiest households live just outside Olympia's city limits. Nothing would prevent the city's high earners from joining them.

By proposing its own amended ordinance, the City Council is sending voters the message that a city income tax is feasible, practical and by implication legal. If the council manages to swindle voters into believing that the hefty expenses to implement and enforce a new tax, which the city is totally unequipped to collect, are trivial, only Washington's Constitution and eight decades of legal precedent would stand in the way.

Olympia is a handpicked test case by income tax backers. City voters supported a 2010 state income tax initiative that failed statewide. Since extensive statewide strategies have repeatedly flopped, this is the first narrow, concentrated attempt to pass a local income tax — purposely provoking a legal challenge that advocates hope will reach the state Supreme Court, which would then overturn decades of precedent and pave the way for a statewide income tax without a constitutional amendment.

Win or lose, such a legal showdown would leave Olympia's taxpayers footing the bill. If this proposal were truly about paying for higher education for local residents, supporters would have done what every other municipality does when it wants something — pass a new property or other tax levy, or advocate for a shift in current priorities.

In the end, this proposal is not really about Olympia. This is the classic "lipstick on a pig" scheme to advance the long-term goal of fundamentally changing Washington's tax structure at the expense of the integrity of our state Constitution.

As Washington residents, we need to protect one of our most precious competitive advantages in tax policy: no income tax. In almost every other category our state is very expensive for business owners and wealth producers. The way we keep the welcome mat out for them is by stopping an income tax.

Amber Gunn is an economic policy fellow with the Freedom Foundation, an Olympia-based free market think tank.

Attachment 12



FW: Confusing news account

Thu, Sep 1, 2016 at 1:00 PM

On 8/10/16, 4:19 PM, "Mark Barber" <MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@ci.olympia.wa.us> on behalf of mbarber@ci.olympia.wa.us> wrote:

Sender: mbarber@ci.olympia.wa.us
Subject: RE: Confusing news account
Message-Id: <619F147E2B832F40BEA0EF50661BD7CA2B9C0C82@Exchange2010.olympia.local>
To: GOverstreet@myfreedomfoundation.com

----- Forwarded message -----

From: Mark Barber <mbarber@ci.olympia.wa.us>
To: Greg Overstreet <GOverstreet@myfreedomfoundation.com>
Cc:
Date: Wed, 10 Aug 2016 16:19:48 -0700
Subject: RE: Confusing news account

Greg,

The parties have received confirmation that this matter has been reassigned to Judge Mary Sue Wilson, who will conduct the hearing on August 25 at 3:30 pm.

Mark Barber, City Attorney

City of Olympia

PO Box 1967

Olympia, WA 98507-1967

Direct Line: (360) 753-8223

Email: mbarber@ci.olympia.wa.us

cid:image001.png@01D0D9D3.33A91430

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From: Greg Overstreet [mailto:GOverstreet@myfreedomfoundation.com]
Sent: Wednesday, August 10, 2016 3:40 PM
To: Mark Barber
Subject: RE: Confusing news account

Thanks, Mark. I appreciate it.

From: Mark Barber [mailto:mbarber@ci.olympia.wa.us]
Sent: Wednesday, August 10, 2016 2:34 PM
To: Greg Overstreet <GOverstreet@myfreedomfoundation.com>
Subject: RE: Confusing news account

Greg,

I neglected to inform you that the court advised the parties this morning that the court had a conflict with the scheduled hearing on August 17 at 3:30 pm. The parties responded and advised the judicial assistant that Thursday, August 25 at 3:30 pm was acceptable. We have not received confirmation of the new date/time from the judicial assistant.

As an explanation, I added the service information related to the Attorney General because Opportunity for Olympia is alleging that RCW 36.65.030 is unconstitutional and the defendants have so advised the AG's Office.

Mark Barber, City Attorney

City of Olympia

PO Box 1967

Olympia, WA 98507-1967

Direct Line: (360) 753-8223

Email: mbarber@ci.olympia.wa.us

cid:image001.png@01D0D9D3.33A91430



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personal information, may ultimately be subject to disclosure as a public record.

From: Greg Overstreet [<mailto:GOverstreet@myfreedomfoundation.com>]
Sent: Wednesday, August 10, 2016 2:15 PM
To: Mark Barber
Subject: RE: Confusing news account

Thanks, Mark.

From: Mark Barber [<mailto:mbarber@ci.olympia.wa.us>]
Sent: Wednesday, August 10, 2016 2:10 PM
To: Greg Overstreet <GOverstreet@myfreedomfoundation.com>
Subject: RE: Confusing news account

Greg,

The lawyers and parties are as follows:

For the City of Olympia

-

P. Stephen (Steve) DiJulio, WSBA #7139

Jason R. Donovan, WSBA #40994
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Seattle, WA 98101

steve.dijulio@foster.com

j.donovan@foster.com

Tel: 206-447-8971
Fax: 206-749-1927

Mark Barber, City Attorney, WSBA #8379

Annaliese Harksen, Deputy City Attorney, WSBA #31132

City of Olympia
601 4th Avenue East
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Olympia, WA 98507

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aharksen@ci.olympia.wa.us

Tel : 360-753-8223

For Opportunity for Olympia, Ray Guerra and Danielle Westbrook

-

Knoll Lowney, WSBA #23457

Claire Tonry, WSBA #44497

Smith & Lowney PLLC

2317 East John Street

Seattle, WA 98112

knoll@igc.org

clairret@igc.org

Telephone: 206-860-2883

For Thurston County and Mary Hall, Auditor

-

Elizabeth Petrich, WSBA #18713

Chief Civil Deputy Prosecuting Attorney

Thurston County Prosecuting Attorney

Civil Division - Building No. 5

2000 Lakeridge Drive SW

Olympia, V/A 98502

petrice@co.thurston.wa.us

Telephone: 360-786-5540

For the State of Washington and Attorney General

-

Office of the Attorney General

PO Box 40100

Olympia, WA 98504-0100

Telephone: (360) 664-9083

-

Mark Barber, City Attorney

City of Olympia

PO Box 1967

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From: Greg Overstreet [<mailto:GOverstreet@myfreedomfoundation.com>]
Sent: Wednesday, August 10, 2016 12:06 PM
To: Mark Barber
Subject: FW: Confusing news account

Mark:

I just filed a very short amicus curiae brief in support of the City's position in the income tax initiative case. I will not be attending the August 17 hearing or asking for any oral argument time.

I started on the brief yesterday afternoon so I didn't have time to call you first, which is my usual practice.

In any event, could you get me the names of the lawyers in the case other than Lowney. I only had Lowney's brief so use for the declarations of service.

Thanks.

Greg

From: Mark Barber [<mailto:mbarber@ci.olympia.wa.us>]
Sent: Monday, July 25, 2016 5:11 PM
To: Jami Lund <JLund@myfreedomfoundation.com>
Subject: RE: Confusing news account

Mr. Lund,

In response to your query, please see attached.

Mark Barber, City Attorney
City of Olympia
PO Box 1967
Olympia, WA 98507-1967
Direct Line: (360) 753-8223
Email: mbarber@ci.olympia.wa.us

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From: Jami Lund [<mailto:JLund@myfreedomfoundation.com>]
Sent: Thursday, July 14, 2016 9:53 AM
To: Mark Barber
Subject: Confusing news account

Hello Mr. Barber,

I just called, but you were in a meeting. As happens on occasion, the news account of the city decision is not clear to me:

“the council authorized the city manager to seek a judicial decision in Thurston County Superior Court to determine whether the initiative is lawful.”

This sounds like the city will be going straight to court without a plaintiff, but I cannot tell. Is this an attempt to get some kind of advisory decision?

I’m not an attorney, but in my experience the city could decline to put something on the ballot and let the proponents bring an action. That would be the quickest, most focused effort since it would be over in a matter of months and appeals could be unlikely.

Is there a simple answer to what the city can do to get a ruling on the legality of the initiative you could email, or should I call at a time convenient for you?

Jami Lund

Senior Policy Analyst | Freedom Foundation

JLund@myFreedomFoundation.com

360.956.3482 | PO Box 552 Olympia, WA 98507

myFreedomFoundation.com

2 attachments



Legal Department

image001.png
10K



noname.eml
72K

Attachment 13

☐ Expedite
☐ No hearing set
☒ Hearing is set
Date: Aug. 17, 2016
Time: 3:30 p.m.
Judge/Calendar:
Hon. Anne Hirsch

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

CITY OF OLYMPIA, a Washington municipal
corporation,

Plaintiff,

v.

OPPORTUNITY FOR OLYMPIA, a
Washington Political Committee; RAY
GUERRA; DANIELLE WESTBROOK;
THURSTON COUNTY; and MARY HALL,
Thurston County Auditor,

Defendants.

NO. 16-2-02998-34

**FREEDOM FOUNDATION'S
MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

I. INTRODUCTION

COMES now the Freedom Foundation ("Foundation") and seeks leave to file a very short amicus curiae brief in this statutory construction case. "[E]very statute is to be read in the light of the Constitution[.]" *In re Elliot*, 74 Wn.2d 600, 608, 446 P.2d 347 (1968) (citation omitted). The Foundation seeks to provide the Court with the constitutional backdrop to this statutory construction case.

The Foundation is not seeking leave to intervene as a party, is not directly challenging the proposed initiative on constitutional grounds, and takes no position on whether the proposed

FOUNDATION'S MOTION TO SHORTEN TIME
NO. 16-2-02998-34

1 initiative should appear on the ballot.¹ Instead, the Foundation is merely providing the Court
2 with the constitutional backdrop for interpreting one of the statutes at issue: RCW 36.65.030 (a
3 city “shall not levy a tax on net income.”).

4 II. IDENTITY OF MOVANT

5 The Foundation is a 501(c)(3) policy institute in Olympia, Washington. The
6 Foundation’s mission is to advance individual liberty, free enterprise, and limited, accountable
7 government. The Foundation provided testimony to the City Council about the proposed local
8 initiative at issue in this case.

9 III. ARGUMENT

10 No court rule governs amicus curiae briefs in Superior Court. A trial court has the
11 discretion to accept one or not. The Foundation believes more information is better when a court
12 is making an important decision. Neither party appears to be briefing the constitutional issues
13 affecting this statutory construction case. The Foundation seeks to present the Court with a very
14 short analysis of the constitutionality of an income tax in Washington State.

15 IV. REQUEST FOR RELIEF

16 The Foundation respectfully requests leave to file the attached proposed amicus curiae
17 brief.

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22 ¹ In other cases, the Foundation has taken the position that statutorily *valid* local initiatives should be placed on local
23 ballots. See *Clark v. City of Chelan* (No. 14-2-01095-2) (Chelan County Superior Court), *Good v. City of Shelton*
24 (No. 14-2-00555-9) (Mason County Superior Court), *Brautigam v. City of Sequim* (No. 14-2-00771-2) (Clallam
County Superior Court). However, this case is different: The proposed local initiative to implement a city income
tax is statutorily invalid. See RCW 36.65.030 (a city “shall not levy a tax on net income.”). The Foundation’s
proposed amicus curiae brief does not address the issue of whether the proposed initiative should be placed on the
ballot.

1 RESPECTFULLY SUBMITTED on August 10, 2016.

2 

3 Greg Overstreet, WSBA #26682
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FOUNDATION'S MOTION TO SHORTEN TIME
NO. 16-2-02998-34

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DECLARATION OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on August 10, 2016, I served a copy of this document on all counsel via email at the addresses listed as follows:

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*Attorneys for Plaintiff City of
Olympia*

*Attorney for Defendant Thurston
County*

Signed August 10, 2016, at Olympia, Washington.


KIRSTEN NELSEN

☐ Expedite
☐ No hearing set
☒ Hearing is set
Date: Aug. 17, 2016
Time: 3:30 p.m.
Judge/Calendar:
Hon. Anne Hirsch

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

CITY OF OLYMPIA, a Washington municipal
corporation,

Plaintiff,

v.

OPPORTUNITY FOR OLYMPIA, a
Washington Political Committee; RAY
GUERRA; DANIELLE WESTBROOK;
THURSTON COUNTY; and MARY HALL,
Thurston County Auditor,

Defendants.

NO. 16-2-02998-34

[proposed] **FREEDOM FOUNDATION'S
AMICUS CURIAE BRIEF**

I. ARGUMENT

A. The statute concerning a municipality's authority to levy an income tax must be read in conjunction with the state Constitution.

RCW 36.65.030 provides that a city "shall not levy a tax on net income."

"[E]very statute is to be read in the light of the Constitution[.]" *In re Elliot*, 74 Wn.2d 600, 608, 446 P.2d 347 (1968) (citation omitted).

B. The state Constitution prohibits an income tax like the one in the proposed initiative.

The people of the State of Washington have been asked at least six times whether they want a state income tax. The first and only state initiative to pass was in 1932. Shortly after the

[PROPOSED] FOUNDATION'S
AMICUS CURIAE BRIEF
No. 16-2-02998-34

1 initiative passed, but before the income tax was assessed, a citizen filed a case to enjoin the
2 operation of the new income tax. See *Culliton v. Chase*, 174 Wn. 363, 373, 25 P.2d 81 (1933).
3 The Culliton court considered Article VII, section 1 of the Washington State Constitution which
4 requires that "[a]ll taxes shall be uniform upon the same class of property within the territorial
5 limits of the authority levying the tax The word 'property' as used herein shall mean and
6 include everything, whether tangible or intangible, subject to ownership." Wn. Const. article VII,
7 § 1. The Culliton court made clear that "[a]ll laws on any subject whatever, enacted by either the
8 people or the Legislature, must be governed by the provisions of the Constitution in force at that
9 time." *Culliton*, 174 Wn. at 373.

10 After establishing that an initiative had to meet constitutional muster like any other
11 legislation, the Culliton court determined that the comprehensive definition of property used in
12 the Constitution, which included intangibles, necessarily included income. Once the Court
13 determined that income was property, it was clear that a progressive taxation scheme did not
14 comply with the constitutional requirements that property be taxed uniformly. The court struck
15 down the income tax initiative. *Culliton*, 174 Wash. at 378–79.

16 The Supreme Court revisited the issue a few years later in *Jensen v. Henneford*,
17 striking down a tax on net income over \$4,000 because it was a property tax which did not
18 comply with the uniformity requirement. *Id.*, 185 Wn. 209, 216, 53 P.2d 607 (1936). In 1951 the
19 Supreme Court struck down an income tax on business using the Culliton court reasoning that
20 income was property which had to be taxed uniformly. *Power, Inc. v. Huntley*, 39 Wn.2d 191,
21 196–97, 235 P.2d 173 (1951).

22 The Olympia initiative is similar to *Culliton*, *Jensen*, and *Power, Inc.* in that it taxes
23 only incomes over \$200,000, and is therefore not uniform.

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II. CONCLUSION

Thus, RCW 36.65.030, which provides that a city “shall not levy a tax on net income,” should be interpreted in light of Wn. Const. article VII, § 1 as interpreted in *Culliton, Jensen*, and *Power, Inc.*

RESPECTFULLY SUBMITTED on August 10, 2016.


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DECLARATION OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on August 10, 2016, I served a copy of this document on all counsel via email at the addresses listed as follows:

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*Attorney for Defendant Thurston
County*

Signed August 10, 2016, at Olympia, Washington.


KIRSTEN NELSEN

January 27, 2017

Linda Dalton
Office of Attorney General of Washington
Campaign Finance Unit
PO Box 40100
Olympia, WA 98504-0100

Dear Linda,

Pursuant to your request dated January 12, 2017, Freedom Foundation hereby responds to the citizen action complaint filed by Andrew Biviano. As stated more fully below, the Foundation denies that it is a political committee and that it failed to properly file C-6 reports as alleged in the citizen action complaint.

For your convenience, I have attached a timeline of the events in this matter as the last page to this response.

I. The Freedom Foundation is not a political committee.

The citizen action complaint submitted by the Northwest Accountability Project (“NAP”) fails to support the claim that Freedom Foundation (“Foundation”) is a political committee.

NAP’s entire complaint merely addresses the Freedom Foundation’s *philosophical* opposition to income taxes, generally, and the intention to continue that work as part of its ongoing, statewide free speech expression of opposition to the injustice of targeted income taxes. It is not a campaign finance violation to hold views with which NAP disagrees.

Likewise, NAP’s complaint focuses upon the Foundation’s communications with the Olympia City Council as the Council undertook its normal, governing decision-making process—specifically as to whether the Council would introduce an income tax city ordinance that it could adopt apart from local initiative process.

The Fair Campaign Practices Act (“FCPA”), ch. 42.17A RCW, 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.005(37). “[A]n entity can meet the definition of a ‘political committee’ under either the ‘receiving contributions’ or ‘making expenditures’ portion of the statutory definition[.]” *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 416 (2015). NAP claims that the Foundation

is and should have registered as a political committee pursuant to the “receiver of contributions” prong. Under the contribution prong, a court “asks whether an organization ‘expects to receive or receives contributions toward electoral goals.’” *Id.*

In arguing that the Foundation is a political committee under the “receiver of contributions” prong, NAP relies exclusively upon Attachment 1 to its complaint. Attachment 1 is a letter dated August 19, 2016 from the Foundation to its existing supporters generally requesting funding (for the Foundation, not a campaign).

On its face, Attachment 1 nowhere says or suggests that the Foundation was expecting to receive contributions with which it will make electoral expenditures opposing Initiative 1. The only activity the Foundation says it will engage in related to Initiative 1 is contained on page 7 of the fundraising letter:

The Freedom Foundation has stepped up to lead the fight. We are rallying Olympia Freedom Foundation members, and we’ve persuaded the City Council to oppose this awful tax. And we will keep exposing the abuse of union members who have been required to fund this injustice, and working to free those employees from the unions’ grip. And we will be scrutinizing the electioneering effort for violations of the Public Disclosure Act.

I can promise you this: On the day this ballot measure is approved—if, that is, the people of Olympia are conned into passing it—the Freedom Foundation will immediately challenge its constitutionality in court.

Seeking to procure contributions for these activities do not qualify the Foundation as a political committee.

The Foundation activities described in the letter are as follows:

- A Foundation staffer wrote an opinion editorial that was published on May 26, 2016 in *The Olympian*. Signatures supporting Initiative 1’s submission to the city ballot were not submitted to the city until July 6 so there was no “ballot proposition” at the time. The op-ed generally discussed to prospect of a city income tax.
- The Foundation has always informed the general public of the public policy disadvantages of imposing of any income taxes in Washington.
- The Foundation mobilized and would continue to mobilize concerned citizens in Olympia to accept the City Council’s invitation to citizens to attend public hearings and provide feedback to the Council on the city income tax issue.
- The Foundation has educated and will continue to educate the public about this issue.
- The Foundation indicated that it would marshal legal resources to invalidate Initiative 1 as an unconstitutional law only if and after Initiative 1 became law.
- The Foundation stands up for all communities—particularly poorer communities who would be adversely affected by the imposition of income taxes.

- The Foundation urged its supporters in Olympia to voice their opinions on the topic of income taxes to their City Council.
- The Foundation exposed and would continue to expose how union members were forced to fund the campaign to gather signatures and then support Initiative 1.
- The Foundation helped and would continue to help union members who unwittingly and unwillingly funded the campaign to learn of their constitutional rights to decline to pay for electioneering.
- The Foundation scrutinized and would continue scrutinizing the funding of the pro-Initiative 1's campaign effort.

Again, none of these actions or activities suggests that funds the Foundation expected to receive in response to Attachment 1 were going to be used to oppose Initiative 1 in any electioneering sense. The letter explicitly describes the Foundation's intention to initiate a post-election legal action (if necessary), the Foundation's local and statewide informational efforts, and the Foundation's encouragement for citizen engagement with their elected officials at public forums. This is quintessential First-Amendment protected speech.

The August 19 letter was sent after the Olympia City Council had voted to keep Initiative 1 *off* the ballot; there was no "ballot proposition" on August 19. Further, the Foundation's activities described in the letter are not regulated activities under the FCPA. The Public Disclosure Commission has explicitly stated it does not regulate policy communications with local governments nor does it accept filings which report the same. Nothing in the letter "directly or indirectly" appeals "for votes or for financial or other support or opposition in any election campaign." *See* RCW 42.17A.005(36). Finally, the letter was not directed at voters (but rather existing Foundation supporters), and the letter did not urge recipients to vote "no" on Initiative 1, which, again was not on the ballot then.

II. The Foundation was not required under RCW 42.17A.255 to file a Form C-6.

NAP next argues that the Foundation failed to report as independent expenditures various staff time it expended to discuss an Olympia income tax. However, the suggestion that the Foundation has an obligation to report independent expenditures presumes that it is engaging in political advertising. This presumption is unwarranted.

RCW 42.17A.255 defines an independent expenditure as "any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240." Because independent expenditures are communications that convey political advertising, *see* RCW 42.17A.005(26), the definition of "political advertising" is helpful to determine what type behavior can be characterized as a regulable independent expenditure. Political advertising:

includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, **used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.**

RCW 42.17A.005(36) (emphasis added). None of the Foundation activities NAP complains of directly or indirectly appeal for votes or for financial or other opposition to Initiative 1. The Foundation took a public policy position on the imposition of an income tax at any level of Washington government; this is far different than “campaigning” for or against an idea that was not on the ballot.

On September 2, 2016 – long after the August 19 letter at issue – the Court of Appeals put Initiative 1 on the ballot. That is, there was only a “ballot proposition” after September 2. During the period from September 2 to the November 8 election, the Foundation took no action or even suggested action during the active campaign on the ballot measure. (Nor did the Foundation do any of these things before September 2.) The Foundation opposed the proposed income tax as an issue of policy concern, but it never advocated that voters vote for or against Initiative 1. Never.

For these reasons, the Foundation did not make independent expenditures and thus was not required to complete Forms C-6.

A. July 11, 2016 email message from Jami Lund (NAP Attachment 2)

On July 11, the day Jami Lund from the Foundation sent the email included in Attachment 2, there was no “Initiative 1,” because the Olympia City Council had not made a decision about whether to adopt its own resolution regarding an income tax. No ballot proposition existed.

No testimony to the city council could be construed to be an appeal for citizen votes or a solicitation of funds before a ballot proposition existed or a campaign had begun. The emailed invitation to speak to the Council sent to pre-existing Foundation supporters was not a campaign expenditure because there was no ballot measure upon which to campaign. Neither public commentary nor requests for political commentary submitted to a policy-making body is political advertising or a campaign expenditure. No one was paid for their effort to share thoughts with Olympia City Council at 7:00 on July 12, 2016. The cost of sending an email message to roughly 200-300 local residents was de minimis.

Further, NAP’s suggestion that “it is likely that this email was part of a larger campaign” is entirely speculative and untrue. If NAP were able to obtain the July 11 email sent to a small list of Olympia-area Foundation supporters—individuals who gave their email addresses to the

Foundation—then surely NAP should be able to find some evidence of a “larger campaign to reach out to the public.” They cannot, because no such evidence exists.

1. Blog posts, podcasts, and related website and print communications (NAP Attachments 3-9)

Like the Lund email described above, none of the Foundation’s blog posts, podcasts, or related website and print communications in NAP’s Attachments 3-9 show the existence of independent expenditures. None of these communications appeal for a vote against or for Initiative 1 or seek funds for such a campaign. Many were communicated before Initiative 1 was a ballot measure, and some were communicated after the election. Obviously, these were not independent expenditures. It is not an independent expenditure for an organization to publicly state that it believes a particular idea is a bad one.

2. Press outreach and preparation of and Olympian Op-Ed (NAP Attachments 10-11)

NAP’s allegation that the evidence supports an “active press outreach program” is baseless. The cited “evidence” includes one comment by Jami Lund in one news story that was solicited by *The Olympian* (Attachment 10) and an op-ed authored by the Foundation’s economic analyst (Attachment 11).

Mr. Lund was interviewed at a time before the September 2 Court of Appeals order to put Initiative 1 on the ballot. Thus, it occurred at a time when the idea of an Olympia income tax was not a ballot proposition. Further, the comments do not invite readers to vote any particular way (there was no ballot proposition on which to vote), but rather raise questions about city priorities and existing higher education programs – matters of public policy. The suggestion that answering a phone call from a reporter is an “independent expenditure” produces an absurd and free-speech chilling result.

The Foundation’s May 26 op-ed in *The Olympian* addressed the legality of an income tax long before signatures supporting the Olympia income tax were collected and submitted to the City, and months before what eventually became Initiative 1 was a ballot proposition. Like the other activities or communications described above, nothing in the op-ed appeals for votes or financial opposition to Initiative 1 (that did not exist at the time). Expressing that a particular idea is not good policy and may be illegal is not electoral activity.

3. Communicating with Olympia city staff

As an initial matter, NAP refers to a “Washington Freedom of Information Act,” but, of course there is no such thing. Presumably, NAP meant to say that it obtained records via the Public Records Act, ch. 42.56 RCW. This level of shoddiness pervades NAP’s allegations.

To characterize the emails in Attachment 12 as independent expenditures is absurd. These emails are (1) communications between a Foundation attorney and an Olympia city attorney about the dates and times of court hearings in the City's lawsuit against Initiative 1's sponsors; and (2) a question Mr. Lund submitted to the City for clarification of a City statement reported in the news. For the same reasons articulated above, these are clearly not independent expenditures.

4. Testifying about the Freedom Foundation's intent to file post-election lawsuit

Addressing City policymakers during public comment about an issue they are making decision on (but is not a ballot proposition) is not an independent expenditure. Mr. Lund testified that any non-uniform income tax—like the one proposed in Initiative 1 and the alternative income tax proposed by the City Council—is unconstitutional and that the Foundation would likely engage legally to have the tax invalidated if it became law. For the same reasons articulated above, these are clearly not independent expenditures.

5. The Foundation's amicus brief (NAP Attachment 13)

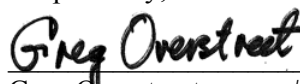
The Foundation submitted a very short (three-page) amicus brief to Thurston County Superior Court supporting the City's *legal position* regarding Initiative 1. The brief did not appeal for votes or financial opposition to what later became Initiative 1 (but was not a ballot proposition at the time of the brief). It merely explained the constitutional history of non-uniform income taxes in Washington. This was not an independent expenditure.

III. Conclusion

For all of these reasons, the Foundation did not conduct an independent expenditure and did not violate the FCPA.

Please notify me if you have additional questions. Thank you.

Respectfully,



Greg Overstreet, WSBA #26822

David M.S. Dewhirst, WSBA # 48229

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Relevant Timeline (all dates in 2016):

- March 29 - Opportunity for Olympia files its first PAC report with the PDC;
- April 5 - Opportunity for Olympia begins signature gathering;
- May 7 - Freedom Foundation records a podcast discussing income taxes and the prior legal rulings related to them with former Supreme Court Justice Jim Johnson and Amber Gunn;
- May 17 - City Council votes to draft a city tax ordinance with a progressive income tax;
- May 26 - Amber Gunn writes an opinion editorial in *The Olympian* about the harms of an income tax and alerting readers to the effort in Olympia;
- July 6 - petition signatures are turned in;
- July 11 - Freedom Foundation sends an email about the City Council open invitation to citizens to testify to some of the Foundation's pre-existing supporters in the Olympia area who have provided email addresses to the Freedom Foundation (Attachment 2);
- July 12 - City Council invites public comment on an ordinance and the petition;
- July 14 - Freedom Foundation writes a blog post about the history and philosophy of income taxes (Attachment 3);
- August 9 - Freedom Foundation offers an amicus brief about constitutional issues with income taxes in the City of Olympia's lawsuit;
- August 9 - Freedom Foundation issues news release about the filing of a brief noting the unconstitutional nature of income taxes;
- August 19 - Freedom Foundation letter about willingness to oppose an income tax in court if passed in Olympia (Attachment 1);
- August 24 - Judge rules initiative is beyond the proper scope of city authority;
- September 2 - Appellate court stayed the August 24 ruling and effectively ordered Initiative 1 to be placed on the ballot;
- September 14 - Superior court judge rewrites the title and orders the clerk to file it.
- November 8 – election



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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October 19, 2016

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 - Freedom Foundation, PDC Case No. 8336

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 August 30, 2016 by Dmitri Iglitzin and Laura Ewan on behalf of the Campaign to Prevent Fraud and Protect Seniors, alleging violations of RCW 42.17A by the Freedom Foundation. The Complaint 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.225¹.

PDC staff reviewed the Complaint and prepared a Report of Investigation, an Addendum to the Report of Investigation, and an Executive Summary and Staff Analysis concerning the alleged violations by the Freedom Foundation. The Commission considered the results of staff’s review at a special telephonic Commission meeting held on October 19, 2016, where staff presented its Executive Summary and Staff Analysis which included a recommendation regarding the allegations. A copy of the Executive Summary and Staff Analysis is enclosed with this letter.

Staff Conclusion

As noted in the attached Executive Summary and Staff Analysis, staff concluded that:

The Freedom Foundation violated RCW 42.17A.255 by failing to disclose or timely disclose independent expenditure activity opposing Initiative 1501 in C-6 filings. Staff concluded that the

¹ 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 Honorable Bob Ferguson
Freedom Foundation, PDC Case No. 8336
October 19, 2016
Page 2

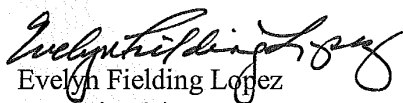
evidence does not support the allegation that the Foundation meets the definition of a political committee, or that it failed to comply with political committee registration and reporting requirements.

Commission Recommendation

By a unanimous vote, 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

cc: Commissioners
Linda A. Dalton, Sr. Assistant Attorney General
Greg Overstreet, Managing Attorney, Freedom Foundation
Dmitri Iglitzin and Laura Ewan, counsel to the Campaign to Prevent Fraud and Protect Seniors

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.225¹.

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.

¹ 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.