



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17

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

Respondent.

PDC Case No. 13-019

Report of Investigation

I.

Background

- 1.1 The American Civil Liberties Union (ACLU-National) is a nationwide, non-profit, non-partisan organization that defends civil rights and civil liberties in the United States. ACLU-National has headquarters in New York City and Washington D.C., and there are ACLU affiliates in all 50 states, including the State of Washington.
- 1.2 The Washington State affiliate is named ACLU of Washington (ACLU-WA) and is comprised of three separate entities: (1) ACLU-WA; (2) ACLU Washington Foundation (ACLU-WA Foundation); and (3) ACLU Washington Endowment (ACLU-WA Endowment). ACLU-WA is made up of a variety of organizations and members that the organization states are “*dedicated to protecting, fostering, and extending the civil liberties principles embodied in the Bill of Rights and the Washington State Constitution.*”
- 1.3 ACLU-WA has been registered with the PDC as a Lobbyist Employer dating back to at least 1997, and has been filing annual Lobbyist Employer reports (L-3 reports) since its registration with the PDC.
- 1.4 On October 2, 2012, a 45-day Citizen Action Letter was filed by Steve Sarich, Arthur West, John Worthington, and Saroj Sidhu pursuant to RCW 42.17A.765(4) with the Washington State Attorney General, King County Prosecuting Attorney, Pierce County Prosecuting Attorney, and Thurston County Prosecuting Attorney.

The complainants alleged that ACLU National; ACLU-WA; ACLU-WA Foundation; and ACLU-WA Endowment have violated provisions of RCW 42.17A by failing to register and report as a political committee for their combined support of I-502, a statewide initiative on the November 6, 2012 general election ballot in Washington State. See **Exhibit #1**.

- 1.5 The Citizen Action Letter was received by the Washington State Attorney General's Office (AGO) on October 2, 2012, and by the King County and Pierce County Prosecuting Attorney's Offices on October 9, 2012. The complaint was referred to the PDC by the AGO for investigation on October 9, 2012.

II.

45-Day Citizen Action Letter Allegations

- 2.1 Specifically, the 45-day Citizen Action Letter alleged that the ACLU-National; ACLU-WA; ACLU-WA Foundation; and ACLU WA Endowment violated RCW 42.17A.205, .235 and .240 by failing to register and report as a political committee disclosing its activities undertaken in support of I-502, a statewide initiative on the November 6, 2012 general election ballot in Washington State.
- 2.2 The letter stated the complainants alleged that "ACLU groups, acting through ACLU WA Drug Policy Director Alison Holcomb....devised a scheme" to allow them to use their "nonpolitical charitable organizations" to support I-502 and the New Approach Washington committee. The complainants alleged that the ACLU is "conducting what can only be described as substantial campaign activity as their primary purpose" in support of I-502, which required them to register and report with the PDC as a political committee.

III.

Findings

- 3.1 On June 1, 2011, New Approach Washington filed a Committee Registration (C-1pc report) with the PDC, registering as a ballot committee in support of the legalization of marijuana in Washington State for 2012.
- 3.2 On May 17, 2012, New Approach Washington filed an amended C-1pc report listing 502 as the number assigned to the initiative proposing to legalize marijuana, and stating that Alison Holcomb was the committee's campaign manager or media contact. Ms. Holcomb is the Drug Policy Director for ACLU-WA.
- 3.3 The initial Summary Contribution and Expenditure reports (C-4 report) filed by New Approach Washington listed in-kind contributions from ACLU-WA totaling \$8,709. During the period June 1, 2011, through October 31, 2012 election cycle New Approach Washington disclosed receiving in-kind contributions from ACLU-WA for every C-4 reporting period.

American Civil Liberties Union-National

- 3.4 On October 25, 2012, Terrence Dougherty, an attorney with ACLU-National submitted a response to the allegations listed in the Citizen Action Letter. **See Exhibit #2.** Mr. Daugherty stated that ACLU-National is affiliated with ACLU-WA, but that “it is a separately-incorporated organization.”
- 3.5 Mr. Daugherty stated that “*ACLU National does not control either ACLU-WA or ACLU-WA-Foundation, and it does not direct either organization’s activities.*” He stated that Alison Holcolmb, spokesperson for the ACLU-WA and I-502, is not an employee of ACLU-National. He stated that based on the separation between ACLU-National, ACLU-WA, and ACLU-WA Foundation, none of the allegations listed in the Citizen Action Letter pertain to ACLU National.
- 3.6 PDC staff reviewed the PDC database and the campaign finance reports filed by New Approach Washington and found no monetary or in-kind contributions had been received from ACLU-National.

ACLU-WA; ACLU-WA Foundation; and ACLU-WA Endowment

- 3.7 Matthew J. Segal, an attorney with the Pacifica Law Group, a firm representing ACLU-WA and the ACLU-WA Foundation, submitted documents providing the following information for the ACLU-WA, ACLU-WA Foundation; and ACLU-WA Endowment.
- ACLU of Washington: ACLU-WA is a registered 501(c)(4) membership organization with 20,000 members, 30 employees, and numerous volunteers. ACLU WA is a non-partisan organization that engages in lobbying and other public policy issues dealing with civil liberties. ACLU-WA dues and contributions it receives are not tax deductible.
 - ACLU of Washington Foundation: ACLU-WA Foundation is a registered 501(c)(3) organization that accepts tax deductible contributions and “engages in litigation, research, and educational programming.”
 - ACLU of Washington Endowment Fund: ACLU-WA Endowment is also a 501(c)(3) organization that “secures and manages funds” for the ACLU of Washington Foundation. ACLU-WA Endowment accepts tax-deductible contributions or gifts.
- 3.8 Mr. Segal stated that the Board of Directors of the ACLU-WA Foundation and the ACLU-WA Endowment are currently comprised of the 9 members of the Executive Committee of the ACLU-WA Board of Directors. The annual budget for each entity to fund its various programs are drafted and proposed by ACLU staff under the oversight of the ACLU-WA Executive Director. He said the proposed budgets for each entity are then reviewed by a budget committee, and presented to the ACLU-WA Board of Directors for final approval.

PDC Interpretation #07-02 “Primary Purpose Test Guidelines”

- 3.9 On May 2, 2007, the Commission adopted PDC Interpretation #07-02, which is based on a formal Attorney General’s Opinion (AGO) and two court cases that were decided after Initiative 276 was approved by voters in 1972. The interpretation describes a “primary purpose” test or analysis that is used to assist in determining when an entity may become a political committee and be required to register and report in accordance with the disclosure requirements. **See Exhibit #3.**
- 3.10 Specifically, the interpretation referenced the trial court’s decision in *Evergreen Freedom Foundation v. Washington Education Association* which adopted a standard for determining “one of the primary purposes” of an entity, and applied it by stating:
- “An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.”**
- 3.11 The interpretation discussed two possible prongs or scenarios under which an entity (person) may become a political committee. The two prongs include: (1) Having the expectation to receive or receiving contributions that are used to support or oppose candidates or ballot propositions; or (2) Having the expectation of making expenditures to further the electoral political goals of an organization.
- 3.12 When the evidence indicates that one of an organization’s primary purposes is electoral political activity during a specific period of time, the organization may be a political committee and be required to comply with the appropriate disclosure requirements.

ACLU-WA response concerning primary purpose

- 3.13 On October 22, 2012, Mr. Segal transmitted an e-mail to the PDC stating that he would not be able to provide response by October 29, 2012, since he had just received the 45-day Citizen Action Letter. He disputed the allegations in the Citizen Action Letter, and stated that he would begin working to provide a response with supporting materials, but said it would likely be at least two weeks before a response could be submitted.
- 3.14 On November 13, 2012, Mr. Segal submitted a four-page response along with a number of attachments on behalf of the ACLU-WA, ACLU-WA Foundation, and ACLU-WA Endowment. He said the three entities would be referred to collectively as ACLU-WA. **See Exhibit #4.** The attachments included:
- A two-page document entitled “The ACLU-WA: An Overview” which provided information about ACLU-National and the three affiliated Washington State entities;

- Attachments B and C which provided information concerning: (1) ACLU-WA and ACLU-WA Foundation total projected and actual monetary and in-kind contributions made in support of I-502 and R-74; and (2) actual and projected percentages that the contributions represented as a percentage of the overall budget totals; and
- Copies of previously filed: (1) Monthly Employer Contribution reports (L-3c reports) filed by ACLU-WA; (2) Monthly Lobbyist Expense reports (L-2 reports) filed by Shanker Narayan, an ACLU staff member on behalf of ACLU-WA; (3) Special Political Expenditures reports (C-7 reports); and (4) An ACLU staff generated log of Shanker Narayan's L-2 reports and a spreadsheet of ACLU reportable expenses for 2011.

3.15 Mr. Segal referred to the PDC definition of a political committee, and PDC Interpretation #07-02 and the "two prong" committee test, which includes a "receiver of contributions" prong and a "making of expenditures" prong. He stated that donations received by ACLU-WA are used for non-political purposes, and are not designated for any electoral or political purpose.

3.16 Mr. Segal stated that ACLU-WA does not accept contributions that would be specifically used, "set aside or earmarked" to support or oppose ballot measures, and that if such an offer was made, it would be "respectfully declined." He asserted that the evidence provided by ACLU-WA, confirms that ACLU-WA is not a political committee under the contribution prong, since it had no expectation of receiving contributions and did not receive any contributions.

3.17 Mr. Segal further asserted that ACLU-WA is not a political committee based on the expenditures prong since "making expenditures is not its primary purpose, or even one of its primary purposes" based on the evidence he provided. He stated that ACLU-WA Foundation annually approves that a portion of the Foundations fund's earnings be transferred to be used for the Foundations general operations, and went on to state the following concerning those transfers:

"On occasion, support or oppositions to initiative or referenda is part of the organizations' activities to achieve civil liberties goals. But such support or opposition occurs sporadically, not on a regular basis. Electoral political contributions in short represent a tiny and only occasional fraction of ACLU-WA's activities."

ACLU-WA and ACLU-WA Foundation: Monetary and In-kind contributions to New Approach Washington and Washington United for Marriage

3.18 Staff reviewed the PDC database and C-4 reports filed by New Approach Washington (I-502) and Washington United for Marriage (R-74), for the total monetary and in-kind contributions received from ACLU-WA during a portion of 2011, and the relevant portion of 2012. Those reports disclosed the following:

- New Approach Washington (I-502): The C-4 reports disclosed that ACLU-WA made total aggregate contributions to New Approach WA of \$433,255 which included monetary and in-kind contributions.
- Washington United for Marriage (R-74): The C-4 reports disclosed that ACLU-WA made monetary and in-kind contributions in the aggregate totaling \$30,082 to Washington United for Marriage.

ACLU-WA Contributions disclosed as a Lobbyist Employer (L-3c report):

- 3.19 As a Lobbyist Employer, ACLU-WA was required to disclose monetary and in-kind contributions made to support or oppose statewide ballot propositions either:
- (1) On the Monthly Lobbyist Employer Contribution reports (L-3c); or
 - (2) Through the registered lobbyist on the Monthly Lobbyist Expense reports (L-2).
- 3.20 ACLU-WA disclosed their contribution activities on the L-3c report, which is required to be filed by the 15th of the month, disclosing reportable contributions made by a Lobbyist Employer during the previous calendar month.
- 3.21 During the period May 2011 through October of 2012, ACLU-WA timely filed monthly L-3c reports disclosing monetary and in-kind contributions made to New Approach Washington (I-502). In addition, beginning in December of 2011 through October 2012, the L-3c reports filed by ACLU-WA also disclosed in-kind contributions made to Washington United for Marriage (R-74).
- 3.22 The L-3c reports filed by ACLU-WA disclosed: (1) Monetary and in-kind contributions made to New Approach Washington totaling \$81,651 (during the period May 16, 2011 through October 31, 2012); and (2) In-kind contributions made to Washington United for Marriage totaling \$30,684 (during the period December 1, 2011 through October 31, 2012). **See Exhibit #5, PDC staff generated chart.**

ACLU-WA Foundation Contributions disclosed as a non filing entity (C-7 report):

- 3.23 The Special Political Expenditures report (C-7 report) is required to be filed by the last day of February by any business, union, association, organization or other entity (except for the Employer of a Lobbyist, or a registered political committee that files campaign disclosure reports) that during the preceding calendar year: (1) contributed over \$16,000 in the aggregate to committees formed to support or oppose a statewide ballot measure or state office candidates; or (2) made independent expenditures of more than \$900 to support or oppose a statewide ballot measure or state office candidates.
- 3.24 On September 28, 2012, ACLU-WA Foundation filed a C-7 report disclosing monetary and in-kind contributions made by the foundation during calendar year 2011, totaling \$168,165. **See Exhibit #6.**

- 3.25 All of the ACLU-WA Foundation monetary and in-kind contributions were made to New Approach Washington in support of I-502. The C-7 report was required to have been filed by February 29, 2012, and was filed by ACLU-WA 212 days late.
- 3.26 The C-7 report was filed by ACLU-WA Foundation before the Citizen Action complaint was filed, and the contributions were disclosed to the public more than one month before the general election.

ACLU-WA response

- 3.27 Mr. Segal provided information about ACLU-WA and ACLU-WA Foundation in Exhibits B and C attached to his November 13, 2012, response to the PDC in order for PDC staff to determine whether one of the ACLU-WA primary purposes was to affect governmental decision making by supporting ballot propositions, thus requiring them to register and report as a political committee.
- 3.28 The charts below list ACLU-WA and ACLU-WA Foundation total expenses as detailed in Exhibits B and C over two fiscal years covering the following: (1) April 1, 2011 through March 31, 2012; and (2) April 1, 2012 through March 31, 2013.
- 3.29 The charts in Exhibits B and C provided information concerning ACLU-WA and ACLU-WA Foundation total projected and actual monetary and in-kind contributions made in support of I-502 and R-74. The exhibits also included actual and projected percentages that the contributions represented to ACLU-WA and ACLU-WA Foundation overall budgeted expenditure totals.

ACLU-WA: Budgetary totals for April 1, 2012 through October 31, 2012:

- 3.30 ACLU-WA disclosed in the chart below that total expenses through October 31, 2012, of the fiscal year ending March 31, 2013 were \$810,753, and that the actual monetary and in-kind contributions totaled \$65,137. The \$65,137 in ACLU-WA contributions represented six percent of total ACLU-WA expenditures for the current fiscal year.
- 3.31 When the projected monetary and in-kind contributions are factored in for the fiscal year, it appears that ACLU-WA contributions will likely total \$98,621, and the projected percentages of contributions to total expenditures will likely represent 12 percent of the overall budget for the current fiscal year.

| | Total Expenses FY through 10/31/2012 | Contributions made: FY through 10/31/2012 | % of total ACLU expenses | Projected contributions through end of FY | Projected % of ACLU expenses |
|---------|--------------------------------------|-------------------------------------------|--------------------------|-------------------------------------------|------------------------------|
| ACLU-WA | \$ 810,753 | \$ 65,137 | 6% | \$ 98,621 | 12% |

ACLU-WA: Fiscal Year April 1, 2011 through March 31, 2012:

3.32 ACLU-WA disclosed in the chart below that total expenses for the fiscal year April 1, 2011 through March 31, 2012 were \$766,160, and that the actual monetary and in-kind contributions totaled \$51,561. The \$51,561 in ACLU-WA contributions represented seven percent of total ACLU-WA expenditures for the prior fiscal year.

| | Total Expenses FY through 3/31/2011 | Contributions made: FY through 3/31/2011 | Total % of ACLU expenses |
|---------|-------------------------------------|------------------------------------------|--------------------------|
| ACLU-WA | \$ 766,160 | \$ 51,561 | 7% |

ACLU-WA Foundation: April 1, 2012 through October 31, 2012:

3.33 ACLU-WA Foundation disclosed in the chart below that total expenses through October 31, 2012, of the fiscal year ending March 31, 2012 were \$2,648,300, and that the actual monetary and in-kind contributions totaled \$163,828. The \$163,828 in ACLU-WA Foundation contributions represented six percent of total ACLU-WA Foundation expenditures for the current fiscal year.

3.34 When the projected monetary and in-kind contributions are factored in for the fiscal year, ACLU-WA Foundation contributions will likely total \$168,388, and the projected percentages of contributions to total expenditures will likely still represent six percent of the overall budget.

| | Total Expenses FY through 10/31/2012 | Contributions made: FY through 10/31/2012 | % of total ACLU expenses | Projected contributions through end of FY | Projected % of ACLU expenses |
|----------|--------------------------------------|-------------------------------------------|--------------------------|-------------------------------------------|------------------------------|
| ACLU-WAF | \$ 2,648,300 | \$ 163,828 | 6% | \$ 168,388 | 6% |

ACLU-WA Foundation: Fiscal Year April 1, 2011 through March 31, 2012:

3.35 ACLU-WA Foundation disclosed in the chart below that total expenses for the fiscal year April 1, 2011 through March 31, 2012 were \$2,518,605, and that the actual monetary and in-kind contributions totaled \$194,211. The \$194,211 in ACLU-WA Foundation contributions represented eight percent of total ACLU-WA Foundation expenditures for the prior fiscal year.

| | Total Expenses FY through 3/31/2012 | Contributions made: FY through 3/31/2012 | Total % of ACLU expenses |
|----------|-------------------------------------|------------------------------------------|--------------------------|
| ACLU-WAF | \$ 2,518,605 | \$ 194,211 | 8% |

Additional breakdown of ACLU-WA and ACLU-WA Foundation in-kind contributions:

3.36 On November 27, 2012, Mr. Segal submitted an e-mail with three attachments in response to PDC staff's request for additional information. See Exhibit #7.

3.37 Staff reviewed the attached ACLU-WA and ACLU-WA Foundation staff time spreadsheets, which included ACLU-WA total staff costs, and direct and indirect costs that comprised the in-kind contributions donated to I-502 and R-74. The total in-kind contributions to I-502 and R-74 were as follows:

For I-502: ACLU-WA (April 1, 2011 through October 31, 2013)

- \$73,514 for total in-kind contributions that included: (1) \$64,519 in total staff expenses; (2) \$1,228 in direct expenses; and (3) \$7,767 for indirect Expenses.

For I-502: ACLU-WA Foundation (April 1, 2011 through October 31, 2013)

- \$178,039 for total in-kind contributions that included: (1) \$138,167 in total staff expenses; (2) \$21,670 in direct expenses; and (3) \$18,202 for indirect Expenses.

R-74: ACLU-WA (April 1, 2011 through October 31, 2013)

- \$30,684 for total in-kind contributions that included: (1) \$24,098 in total staff expenses; (2) \$4,023 in direct expenses; and (3) \$2,563 for indirect Expenses.

3.38 Mr. Segal stated that the direct costs included ACLU: (1) staff travel; (2) photocopies; (3) polling; (4) literature and handouts; (5) coffee; and (6) costs of holding conference calls. He stated that the indirect expenses included the pro rata share of ACLU office expenses that were considered to be in-kind contributions in the event that staff contributed time while on ACLU-WA time and premises. The indirect expenses included the pro rata share of ACLU-WA: (1) rent; (2) insurance; (3) phone service; (4) copier service; and (5) supplies. He stated the pro rata share was based on ACLU-WA totaling all of the staff hours compiled and reported as in-kind contributions for the month at issue, and dividing those hours by the total number of all staff hours worked during that month.

3.39 Mr. Segal stated that concerning the \$35,303 in staff expenses disclosed as in-kind contributions for I-502 for the period April 1 through October 31, 2012 (detailed in Exhibit B of his November 13, 2012 response), the total in-kind contributions was for services provided by eight ACLU-WA employees.

3.40 Mr. Segal stated that concerning the \$29,216 in staff expenses disclosed as in-kind contributions for I-502 for the period April 1, 2011 through March 31, 2012 (as detailed in Exhibit C), the total in-kind contributions was for services provided by 11 ACLU-WA employees. Mr. Segal noted that the totals listed in Exhibits B and C *“captures any employee’s time that might be considered an in kind donation, although a number of these donations were extremely limited.”*

3.41 Mr. Segal stated that three ACLU-WA employees comprised the \$22,665 in total staff expenses for R-74 as listed in Exhibit B, and two ACLU-WA employees comprised the that \$5,766 in Exhibit C.

3.42 Mr. Segal stated that the combined ACLU staff time reported as in-kind contribution for fiscal year 2012 was less than six percent of total ACLU hours worked.

IV. **Scope**

4.1 Staff reviewed the following documents and information as part of its investigation:

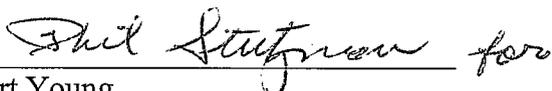
- Citizen Action Letter filed against the ACLU National, and ACLU-WA, ACLU-WA Foundation, and ACLU WA Endowment.
- The PDC database for ACLU-WA monetary and in-kind contribution made to New Approach Washington, and the C-4 reports filed by New Approach Washington disclosing in-kind contributions received from ACLU-WA .
- October 25, 2012, one-page response letter to the Citizen Action Letter from Terence Dougherty, an attorney representing the ACLU National.
- November 13, 2012, four-page response and attachments to the Citizen Action Letter from Matthew J. Segal, an attorney with the Pacifica Law Group, a firm representing ACLU-WA.
- November 27, 2012, two-page e-mailed response with three attachments in response to PDC staff's request for additional information concerning the Citizen Action Letter.

V. Law

- 5.1 **RCW 42.17A.005(39)** 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."
- 5.2 **RCW 42.17A.205** require political committees to register with the PDC if they have the expectation of receiving contributions or making expenditures in support a statewide ballot proposition.
- 5.3 **RCW 42.17A.235 states that RCW 42.17A.240** require political committees, including bona fide political party committees, to timely and accurately file reports of contributions and expenditures, including the disclosure of contributions made to candidates for public office. Under the full reporting option, until five months before the general election, Summary Contribution and Expenditure Reports (C-4 reports) are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Contribution deposits made during this same time period must be disclosed on the Monday following the date of deposit.

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

Respectfully submitted this 18th day of October, 2013.


Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** 45-Day Citizen Action Letter filed against the ACLU by filed by Steve Sarich, Arthur West, John Worthington, and Saroj Sidhu.
- Exhibit #2** October 25, 2012, letter from Terrence Dougherty, an attorney with the American Civil Liberties Union in New York City (ACLU-National).
- Exhibit #3** PDC Interpretation #07-02 “Primary Purpose Test Guidelines”
- Exhibit #4** November 13, 2012, four-page response letter with attachments from Matthew Segal on behalf of the ACLU of Washington, ACLU of Washington Foundation, and ACLU of Washington Endowment.
- Exhibit #5** PDC staff generated chart detailing ACLU-WA contributions as reported on the Monthly Lobbyist Employer contribution report (L-3c report).
- Exhibit #6** September 28, 2012, Special Political Expenditures report (C-7 report) filed by ACLU-WA Foundation disclosing monetary and in-kind contributions made during calendar year 2011.
- Exhibit #7** November 27, 2012, email from Mr. Segal with three attachments in response to PDC staff’s request for additional information.