

The Honorable John A. Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, D.C. 20224

12/2/2015

Re: Complaint against the Freedom Foundation

Dear Commissioner Koskinen:

The undersigned groups and individuals respectfully request that the Internal Revenue Service (“IRS”) investigate whether the Freedom Foundation, a self-described “think and action tank” organized and operated in Oregon and Washington, is operating exclusively for exempt purposes as required by section §501(c)(3) of the Internal Revenue Code (“IRC” or “Code”).

Organizations exempt under section 501(c)(3) of the IRC are granted subsidies in the form of tax exemption on income and tax-deductible contributions. Tax exemption on income and deductible contributions have much the same effect as cash grants to the receiving organization and its contributors. See *Regan v. Taxation with Representation*, 461 U.S. 540 (1983). These subsidies are granted in accordance with the organization’s agreement to adhere to certain restrictions and refrain from certain behaviors. In the absence of the organization’s adherence to the aforementioned criteria, taxpayers become responsible for subsidizing activities that do not generally benefit the public and are not appropriate for an organization exempt under section 501(c)(3).

The Freedom Foundation is flagrantly disregarding the requirements and restrictions of the IRC and as a result, its exemption under section 501(c)(3) should be revoked. As laid out in the following complaint and supported by specific evidence:

- **The Freedom Foundation is participating in political campaign intervention.** To qualify for exemption under section 501(c)(3), an organization may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This prohibition is absolute. Based on all facts and circumstances demonstrated by the evidence and examples included in this complaint, it is clear the Freedom Foundation is directly intervening in political campaigns through its own actions and through individuals acting on behalf of the organization.
- **The Freedom Foundation is operated for the private benefit of the Republican Party and other conservative and libertarian groups in the states of Washington and Oregon.** To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be operated exclusively for exempt purposes and not for the benefit of a private individual or group. This prohibition requires that no more than an insubstantial

benefit should flow to a private party, including unrelated third parties. Because the actions of the Freedom Foundation benefit the Republican Party and similar political groups, in far greater than an insubstantial amount, it is not operating for the benefit of the public and its exemption under section 501(c)(3) should be revoked.

- **A substantial part of the Freedom Foundation's activities is attempting to influence legislative activity and lobbying.** A section 501(c)(3) organization is permitted to undertake a limited amount of lobbying activity while maintaining its exempt status. As an organization that has elected to be subject to the expenditure test under section 501(h) the Freedom Foundation regularly reports figures that suggest it is within the acceptable parameters of this test. However, given the information contained in Freedom Foundation communications and materials, statements made by leaders of the organization, and activities of its staff, it appears that based upon information and belief the lobbying expenses of the organization may be far in excess of what is permissible for an organization exempt under section 501(c)(3). Accordingly, when all the facts and circumstances are considered, additional review by the IRS should be conducted to determine whether revocation, or the issuance of excise taxes, are appropriate.

In the attached complaint being filed today these allegations are outlined in greater detail along with evidence demonstrating that the actions taken by the Freedom Foundation are in violation of its exempt status.

Thank you for your consideration,

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Northwest Accountability Project

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Fuse Washington

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## COMPLAINT

The Northwest Accountability Project respectfully requests the Internal Revenue Service (“IRS”) investigate whether the Evergreen Freedom Foundation (“Freedom Foundation”), an organization incorporated in Washington and currently claiming exemption under section 501(c)(3) of the Internal Revenue Code (“Code” or “IRC”), is operating in a manner that is in violation of its exempt status by engaging in political campaign intervention, providing a private benefit to the Republican Party and other conservative and libertarian groups in Washington and Oregon, and by possibly exceeding its permissible lobbying expenditures under section 501(h).

The Freedom Foundation incorporated in Washington State on January 4, 1991, applying for Federal tax exemption as an “educational organization” under section 501(c)(3) of the Code.<sup>1</sup> According to its bylaws, the organization was founded to “uphold and strengthen the fundamental principles of individual liberty, traditional American values and institutions, productive free enterprise, common sense policies, environmental and natural resource management, responsible and (sic), budget and taxation” by “maintain[ing] regular and bipartisan communication with elected officials and community and business leaders” and conducting “research and publishing studies and programs dealing with basic affordable family healthcare and housing for low income families” among other purposes.

Since 1991, the Foundation has swelled from two employees to nearly twenty, and lost track of the “bipartisan” objectives outlined by its founders. It has since fully embraced its role as a partisan group bent on advocating for the political gain of the Republican Party, similar organizations, and their candidates through campaign intervention and massive lobbying offensives. When Tom McCabe became CEO and took over the organization in 2013, he abandoned even the idea that the Freedom Foundation was run for the “public good;” as one representative for the Foundation put it, “he doesn’t want us to be a think tank anymore.”<sup>2</sup>

Although there has been a demonstrable shift in the Freedom Foundation’s mission and political tactics since its inception, it still keeps the benefits that come with its 501(c)(3) exemption to garner legitimacy and enjoy what amounts to tax-payer assistance for its partisan work. Complaints have been filed with the IRS alleging misconduct and violations of the Code

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<sup>1</sup> IRC § 501(c)(3).

<sup>2</sup> Many of the statements included in this complaint were obtained based on the recollection of individuals in attendance at the events discussed below. Should the IRS wish to verify the details of any statements contained in this complaint the Northwest Accountability Project can provide additional information to support the validity of such statements.

as recently as October of 2014, however the organization's exemption remains intact. Even more recently, the State of Washington sued the organization in October, 2015, alleging that the group violated campaign finance laws when it failed to report its involvement in ballot initiatives. Without immediate action by the IRS, the Freedom Foundation will continue to abuse its status as an "educational" organization exempt under section 501(c)(3), contrary to the clear legal rules contained in that provision of the Code.

### **Background on the law governing section 501(c)(3) Exempt Organizations**

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be both organized and operated exclusively for exempt purposes set forth in section 501(c)(3). To qualify for such exemption an organization must satisfy four criteria: it must be organized and operated exclusively for exempt purposes; no part of its net earnings may inure to the benefit of a private shareholder or individual; no part of its activities may constitute intervention or participation in any political campaign on behalf of any candidate for public office; and no substantial part of its activities may consist of lobbying activities.<sup>3</sup> An organization's failure to satisfy any of the requirements of the organization or operational tests renders an organization unable to qualify or remain exempt under section 501(c)(3).<sup>4</sup> Thus the presence of a single substantial nonexempt purpose that violates the criteria stated above will disqualify any section 501(c)(3) organization, regardless of whether it furthers other truly exempt purposes.<sup>5</sup>

As stated above, section 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more exempt purposes. If the organization fails either the organizational test or the operational test, it is not exempt.<sup>6</sup> The organizational test concerns the organization's articles of organization or comparable governing documents. The operational test of section 501(c)(3) is designed to insure that the organization's resources and activities are devoted to furthering exempt purposes that benefit the general public. The operational test examines the actual purpose for the organization's activities and not the nature of the activities or the organization's statement of purpose.<sup>7</sup> In testing compliance with the operational test, the Service must look beyond the organization's charter, and claims of exempt behavior, to discover "the actual objects motivating the organization and the subsequent conduct of the organization."<sup>8</sup>

The true purpose of an organization, as well as the actual nature of its activities, are questions of fact.<sup>9</sup> As such, the following complaint focuses on the operational test and will give specific examples, supported by evidence, of facts that demonstrate the Freedom Foundation has

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<sup>3</sup> See *American Campaign Academy*, 92 T.C. 1053 (1989), 4787-88X.

<sup>4</sup> See *Levy Family Tribe Foundation v. Commissioner*, 69 T.C. 615, 618 (1978)

<sup>5</sup> *Better Business Bureau v. United States*, 326 U.S. 279 (1945).

<sup>6</sup> Treas. Reg. § 1.501(c)(3)-1(a)(1).

<sup>7</sup> *American Campaign Academy*, 92 T.C. 1053 (1989), 4787-88X. Citing to *Kentucky Bar Foundation v. Commissioner*, 78 T.C. 921, 923- 924 (1982).

<sup>8</sup> *Taxation with Representation v. United States*, 585 F.2d 1219, 1222 (4th Cir. 1978), citing *Samuel Friedland Foundation v. United States*, 144 F.Supp. 74, 85 (D.N.J. 1956); *Christian Manner International v. Commissioner*, 71 T.C. 661, 668 (1979).

<sup>9</sup> *Christian Manner International v. Commissioner*, 71 T.C. at 668.

not maintained its legitimate tax exempt status and is, in fact, operating in a manner that is inconsistent with exemption under section 501(c)(3).

### Summary

- I. The Freedom Foundation is participating in political campaign intervention.** To qualify for exemption under section 501(c)(3), an organization may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This prohibition is absolute. Based on all facts and circumstances demonstrated by the evidence and examples included in this complaint, it is clear the Freedom Foundation is directly intervening in political campaigns through its own actions and through individuals acting on behalf of the organization.
  
- II. The Freedom Foundation is operated for the private benefit of the Republican Party and other conservative and libertarian groups in the states of Washington and Oregon.** To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be operated exclusively for exempt purposes and not for the benefit of a private individual or group. This prohibition requires that no more than an insubstantial benefit should flow to a private party, including unrelated third parties. Because the actions of the Freedom Foundation benefit the Republican Party and similar political groups, in far greater than an insubstantial amount, it is not operating for the benefit of the public and its exemption under section 501(c)(3) should be revoked.
  
- III. A substantial part of the Freedom Foundation's activities is attempting to influence legislative activity and lobbying.** A section 501(c)(3) organization is permitted to undertake a limited amount of lobbying activity while maintaining its exempt status. As an organization that has elected to be subject to the expenditure test under section 501(h) the Freedom Foundation regularly reports figures that suggest it is within the acceptable parameters of this test. However, given the information contained in Freedom Foundation communications and materials, statements made by leaders of the organization, and activities of its staff, it appears that based upon information and belief the lobbying expenses of the organization may be far in excess of what is permissible for an organization exempt under section 501(c)(3).

Accordingly, additional review should be conducted to determine whether revocation, or the issuance of excise taxes are appropriate when all the facts and circumstances are considered.