

Oregon Department of Justice  
Charitable Activities Section  
1515 SW 5th Ave., Suite 410  
Portland, Oregon 97201

March 8, 2016

Dear Attorney General Rosenblum:

A group of nineteen organizations located in Washington and Oregon recently filed a complaint with the Internal Revenue Service (IRS) urging it to revoke the tax-exempt status of the Freedom Foundation, a Washington based organization, operating in Washington and Oregon, that currently claims tax-exempt status under section 501(c)(3) of the Internal Revenue Code. As the Attorney General, your office is responsible for regulating charitable organizations operating in Oregon.<sup>1</sup> Within these parameters the Charitable Activities Section of the Oregon Department of Justice may perform independent investigations to ensure that exempt organizations are operating for a charitable purpose in accordance with the Charitable Trust and Corporation Act.<sup>2</sup> Accordingly, we respectfully now request that your office undertake its own review of the Freedom Foundation's activities to determine if tax exemption under Oregon law is appropriate for an organization that has shown itself to be increasingly politically partisan and only interested in benefiting those whose interests align with its own.

The Oregon State Legislature has expressed an intent to make the Oregon and federal measurements of taxable income identical, however, "it has not expressed an intent to make federal and state exemptions identical."<sup>3</sup> Therefore, even if the Oregon Code uses the same definitions and criteria for nonprofit organizations as the Internal Revenue Code, the Legislature has reserved the right to the State to determine whether an organization satisfies these definitions for the purposes of exemption under Oregon law.<sup>4</sup> As such, the State has an interest, and a right independent of the IRS, in confirming that an organization's actions do, in fact, meet the requirements imposed upon it by the State.

The Freedom Foundation is currently registered with the State as a public benefit corporation. According to the Oregon Nonprofit Corporations Act a public benefit corporation, like the Freedom Foundation, must have a charitable purpose which "promote[s] the well-being of the public at large."<sup>5</sup> The attached complaint and the Freedom Foundation's recent actions demonstrate that its activities have grown increasingly political and are no longer benefiting the public at large. It is clearly not in the public interest to allow the organization to maintain its tax-exempt status while it operates in this fashion. The assertions supported by specific facts in the attached complaint filed with the IRS include the following:

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<sup>1</sup> See ORS 180.060(1)(d) and (6), ORS 128.610 *et seq.*, and ORS Chapter 65.

<sup>2</sup> ORS § 128.680.

<sup>3</sup> *Healthguard Servs., Inc. v. Dep't of Revenue*, 13 Or. Tax 415, 418 (1995) ("Healthguard argues that because it is exempt under federal law, it is now exempt under state law. The court disagrees"); *see* Or. Rev. Stat. Ann. §317.018(1).

<sup>4</sup> *See Healthguard Servs., Inc. v. Dep't of Revenue*, 13 Or. Tax 415, 419 (1995).

<sup>5</sup> Or. Rev. Stat. Ann. §128.620(3); *see also* Or. Rev. Stat. Ann. § 65.001(35).

**The Freedom Foundation is undertaking political campaign intervention on behalf of partisan candidates for office.** In order to qualify for exemption under section 501(c)(3), an organization is prohibited from participating or intervening in any political campaign on behalf of a partisan candidate for public office. Based on the examples provided in the attached complaint and available online, it is clear the Freedom Foundation has grown increasingly partisan and is directly intervening in political campaigns. This partisan activity is evident in the conduct of the organization itself, and also in the conduct of individuals acting on behalf of the organization.

**The Freedom Foundation is operating for the private benefit of the Republican Party and other Conservative and Libertarian groups in the states of Washington and Oregon.** The Internal Revenue Code requires that no more than an insubstantial benefit should flow to any private party, including unrelated third parties, from an organization exempt under section 501(c)(3). The actions of the Freedom Foundation are benefiting the Republican Party and similar political groups, in far greater than an insubstantial amount. Recently, the Freedom Foundation has begun openly working to recruit and train candidates at its “Freedom Academy” events held throughout the region.

**A substantial part of the Freedom Foundation’s activity is attempting to influence legislation and lobbying at the state and local level.** Recent actions by the Washington Attorney General’s Office, information contained in Freedom Foundation materials, and statements made by leaders of the Organization indicate that the Freedom Foundation may be undertaking lobbying activities that are far in excess of what is permissible for an organization exempt under section 501(c)(3).

Generally, corporations operating in Oregon are subject to the corporate excise taxes in exchange for the right to engage in business activities.<sup>6</sup> However, an organization determined by the State to meet the criteria for a 501(c) organization is exempt from paying such taxes on its fundraising activities under §317.080(1) of the Oregon Code. The purpose of such an exemption is to subsidize the activities of organizations that benefit the general public. Based on this implicit intent, and the general requirements placed upon public benefit corporations exempt under Oregon law, the Freedom Foundation should not, due to its actions, qualify for exemption from these taxes any longer.

The tax-exempt status of the Freedom Foundation is also relevant as it relates to the State’s interest in protecting residents who are solicited for donations to the organization. The prospective actions of the IRS related to the attached complaint put in jeopardy the ability for residents who give with the presumption their donation is tax deductible to claim such deduction. As a result, Oregon organizations with an interest in making eligible grants, individuals working to give to further the public good, and taxpayers throughout the State may suffer adverse consequences if the Freedom Foundation is permitted to operate in the manner it currently does as demonstrated in the complaint. Therefore, the State should take action based on its authoritative precedence of independently interpreting exemptions and make its own

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<sup>6</sup> Or. Rev. State. Ann. §317

determination of whether the Freedom Foundation satisfies the requirements placed on such an organization in the State.

Because the activities of the Freedom Foundation no longer benefit the public in a manner anticipated by the legislature in enacting the current tax exemption provisions, and because those activities have become overtly political, we respectfully request that your office investigate whether the Freedom Foundation's tax-exempt status is appropriate under Oregon law. Oregon's citizens should no longer be expected to subsidize the activities of a partisan political group that fails to benefit the public at large and we hope that the evidence included in the attached complaint provides you with the needed information to provide a basis for revocation at this time.

Respectfully Submitted,



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