



September 29, 2008

The Honorable Douglas Shulman  
Commissioner  
Internal Revenue Service  
950 L'Enfant Plaza, S.W.  
5th Floor  
Washington D.C. 20024

**Re: American Future Fund  
Coloradans for Economic Growth  
Freedom's Watch  
Western Skies Coalition**

Dear Commissioner Shulman:

Colorado Ethics Watch ("Ethics Watch") respectfully requests an immediate Internal Revenue Service ("IRS") investigation into the activities of American Future Fund, Coloradans for Economic Growth, Freedom's Watch and Western Skies Coalition. As set forth more fully below, it appears that each of these organizations is primarily engaged in political, not social welfare activities in violation of federal tax law governing not-for-profit corporations. In addition, Freedom's Watch violated public disclosure requirements by refusing to provide, upon in-person request, a copy of its application for tax-exemption and annual information returns, including attachments and supporting documents. Accordingly, Ethics Watch requests that the IRS conduct an investigation and impose any appropriate taxes and penalties. Pursuant to IRS procedures, Ethics Watch is also submitting this complaint to the IRS field office in Dallas.

#### **IRC Section 501(c)(4) Organizations**

American Future Fund, Coloradans for Economic Growth, Freedom's Watch and Western Skies Coalition each purport to be organized under section 501(c)(4) of the Internal Revenue Code ("IRC"), which provides an exemption from federal income taxation for civic leagues or not-for-profit organizations operated primarily to promote social welfare. See 26 U.S.C. § 501(c)(4). To qualify for the exemption, the 501(c)(4) entity must be *primarily engaged* in promoting the common good, general welfare, civic betterment or social improvement of a particular community. See 26 U.S.C. § 501(c)(4), *see also* 26 C.F.R. § 1.501(c)(4)-1(a)(2). The IRS has interpreted the phrase "primarily engaged" in the context of the statute to mean that a 501(c)(4) organization can devote no more than approximately half of its

resources and efforts to activities that are not related to promoting the welfare of a community. See I.R.S. 18th EO Technical CPE Textbook, FY 1995, ch. M, sec. 4.A. A 501(c)(4) organization may engage in political and lobbying activities in carrying out these social welfare-promoting activities.

501(c)(4) lobbying and political activities are divided into two categories - “educational” activities and “action” activities. “Educational” activities are defined as activities relating to the “instruction of the public on subjects useful to the individual and beneficial to the community.” 26 C.F.R. § 1.501(c)(3)-1(d)(3)(b). An organization’s activities are no longer “educational” within the exemption regulation when an organization goes beyond merely sharing a philosophy and instead confers benefits on a private party. See, e.g., Am. Campaign Academy v. Commissioner, 92 T.C. 1053, 1069 (1989). If an organization’s educational activities primarily benefit partisan political goals, for example, then they do not fall within the definition of “educational” activities under 501(c)(4). See Id. at 1076. Activities that are not “educational” under the statute may account for no more than half of the organization’s overall activities under 26 C.F.R. § 1.501(c)(4)-1(a)(2).

“Action” activities involve participation in a political campaign on behalf of a candidate for public office. See 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii). Similar to activities that are not educational, action activities that clearly inure to the benefit of a private party and not to the public at large do not promote social welfare and cannot account for more than half of the organization’s overall activity under 26 C.F.R. § 1.501(c)(4)-1(a)(2). See 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii) (stating that promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of a candidate).

As set forth below, it appears that over half of the activities engaged in by American Future Fund, Coloradans for Economic Growth, Freedom’s Watch and Western Skies Coalition have been partisan, non-educational, action activities that inure to the benefit of conservative candidates for federal public office in violation of statutory requirements for 501(c)(4) organizations.

## **Background**

### *American Future Fund*

American Future Fund (“AFF”) filed its articles of incorporation in Iowa in August 2007. See Articles of Incorporation of American Future Fund, filed August 7, 2007 (attached as Exhibit A). It appears that AFF has not filed any reports with the IRS to date. According to its website, AFF is a 501(c)(4) organization and its purpose is to “provide Americans with a conservative and free market viewpoint to have a mechanism to communicate and advocate on the issues that most interest and concern them.” See American Future Fund website, <http://americanfuturefund.com/index.php>.

Based on Ethics Watch's research, it appears that the only activities AFF engages in that might qualify as educational, social welfare activities include: (1) posting news articles from various media outlets on its website; (2) posting so-called "Twitter Updates" or instant messages; and (3) urging web browsers to sign "AFF's American First Energy Agenda" petition to Congress, which purports to set forth a seven-point energy plan. See Id.

In comparison, AFF has engaged in a considerable amount of activities that qualify as either non-educational or political action activities. In Colorado alone, AFF has purchased over \$215,000 of television air time for an advertisement that sharply criticizes U.S. Senate candidate Mark Udall for his positions on the "development of American energy." See Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated August 13, 2008 (attached as Exhibit B); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated August 19, 2008 (attached as Exhibit C); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated August 25, 2008 (attached as Exhibit D). A copy of the television advertisement is published on AFF's website at, <http://americanfuturefund.com/multimedia/aff-tv-ads/>. AFF purchased similar television ads in Minnesota and New Hampshire regarding candidates for federal office in those states. See AFF's Multimedia webpage, http://americanfuturefund.com/multimedia/aff-tv-ads/.

In addition to these three television ads, AFF has broadcast at least three partisan, political "web videos," two radio ads, and one print ad attacking Democratic members of Congress. See Id.

AFF's web-based activities presumably involve significantly lower costs than its political advertising activities. If, as it appears, AFF is devoting more than half of its efforts and resources to non-educational or political action activities it likely is violating its 501(c)(4) tax exempt status.

### *Coloradans for Economic Growth*

Coloradans for Economic Growth ("CEG") registered as a nonprofit corporation in Colorado on May 7, 2008. See Articles of Incorporation for a Nonprofit Corporation, filed May 7, 2008 (attached as Exhibit E). It appears that CEG has not filed any reports with the IRS to date. According to CEG's website, its purpose is to "promote ideas that secure the future and promote economic growth in Colorado." See Coloradans for Economic Growth website, http://cegnow.org/.

Based on Ethics Watch's research, it appears that the only activity CEG engages in that might qualify as an educational, social welfare activity includes posting news articles from various media outlets on its website. See Id. Although the website invites browsers to sign up to receive CEG press releases, no releases are posted on its site. The website also invites browsers to "sign up" but fails to indicate precisely what for. Id. Finally, CEG's mission statement says it supports and opposes legislation related to health care issues but fails to identify any such issues

or activities on its site. Id.

In contrast, CEG purchased at least \$87,000 worth of television spots in Colorado to broadcast an advertisement attacking U.S. Senate candidate Mark Udall. See Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated May 19, 2008 (attached as Exhibit F); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated June 23, 2008 (attached as Exhibit G); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated June 25, 2008 (attached as Exhibit H). A copy of the television advertisement is published on the multimedia page of CEG's website at <http://cegnow.org/you-dont-know-udall>. CEG's purchase of partisan advertisements clearly qualifies as either non-educational or political action activities.

These facts suggest that CEG's expenditure of resources on social welfare activities has been significantly outweighed by its expenditures on non-educational, action activities in violation of its 501(c)(4) tax exempt status.

### *Freedom's Watch*

Freedom's Watch is registered as a nonprofit corporation, but does not appear to have filed any reports with the IRS. See Freedom's Watch, Lobbying Registration, September 17, 2007 (attached as Exhibit I). According to its website, Freedom's Watch "is organized as a nonprofit corporation and operated in a manner consistent with section 501(c)(4) of the Internal Revenue Code." See Freedom's Watch website, <http://www.freedomswatch.org/freedoms-watch-content/legal-disclaimers.html>. Its stated purpose is to "promote the common good and general welfare of the American people by supporting mainstream conservative public policies." See Freedom's Watch website, <http://www.freedomswatch.org/freedom-watch-content/learn-more.html>.

Based on Ethics Watch's research, it appears that the activities Freedom's Watch engages in that might qualify as educational, social welfare activity include: (1) re-posting news stories, blogs and podcasts from other media outlets; (2) inviting browsers to sign up for email alerts; (3) inviting browsers to "participate" by contacting U.S. Senators, making a donation or sending an email to Freedom's Watch, or applying for internships with Freedom's Watch; and (4) inviting browsers to sign a petition to congress regarding domestic energy production. See Freedom's Watch website, <http://www.freedomswatch.org/>. Although Freedom's Watch states that it "will be engaged in grassroots lobbying and issue advocacy activities" the on-line petition to congress appears to be Freedom's Watch's only advocacy activity.

Freedom's Watch also purports to be engaged in state-wide "issue advocacy," listing 13 states on its website with distinct web pages. Each state-specific web page, however, includes only news clippings from media outlets in that particular state. See e.g., Freedom's Watch website, <http://www.freedomswatch.org/states/colorado/>, <http://www.freedomswatch.org/states/mississippi/>. Freedom's Watch's so-called "Featured

Statewide Initiative” directs web browsers to the same state-specific web pages.

Freedom’s Watch most significant issue advocacy expense appears to have been the cost of creating and running six print advertisements related to national security issues and thanking U.S. soldiers for their service. See Freedom’s Watch website, <http://www.freedomswatch.org/freedom-watch-content/print/-/web-ad/>.

In contrast, Freedom’s Watch has engaged in a considerable number of activities that qualify as either non-educational or political action activities. Freedom’s Watch produced at least seven television advertisements attacking specific Democratic candidates for federal public office and one attacking the Democratic congressional leadership, as well as at least one print and five radio advertisements attacking both specific candidates and the Democratic congressional leadership. See Freedom’s Watch website, [http://www.freedomswatch.org/component/option,com\\_seyret/Itemid,223/catid,6/task,showinbox/](http://www.freedomswatch.org/component/option,com_seyret/Itemid,223/catid,6/task,showinbox/). In Colorado alone, Freedom’s Watch spent over \$150,000 for television advertisements sharply criticizing U.S. Senate candidate Mark Udall. See Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated August 18, 2008 (attached as Exhibit J); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated September 9, 2008 (attached as Exhibit K); Comcast Spotlight Agreement form for Non-Candidate/Issue Advertisements, dated September 12, 2008 (attached as Exhibit L).

Freedom’s Watch appears to have expended significantly more efforts and resources to produce and purchase partisan, political attack advertisements in multiple states than it has on social welfare activities in violation of its 501(c)(4) tax exempt status.

In addition, Freedom’s Watch violated federal tax law when its representative refused to provide copies of its application for tax-exemption and annual information returns, including attachments and supporting documents, upon request.

As a self-styled tax-exempt organization, Freedom’s Watch is subject to public disclosure requirements. These include the requirement to provide, upon request, IRS Form 1024, together with all attachments, any supporting documents, and any letters the IRS sent to the organization concerning its tax-exempt application. See 26 U.S.C. §§6104(d) and (e); 26 CFR §301.6104(a)-1. If the request is made in-person the tax-exempt organization must respond to the request on the same day it was made. Id. The only exception to this requirement is where a non-profit organization makes its documents “widely available,” such as providing the documents in a PDF file on its website. Id.

Freedom’s Watch does not provide the documents on its website and has refused to comply with the requirements for public disclosure. Specifically, on September 25, 2008, Tobias Quaranta made an in-person request of Ryan Teague and Rob Damschen, Freedom’s Watch’s counsel and staff assistant, respectively, for copies of Freedom’s Watch’s tax-exempt application and its Form 990s for the past two years. See Declaration of Tobias Quaranta, September 26,

2008 (attached as Exhibit M).

Freedom's Watch refused to honor Mr. Quaranta's in-person request, claiming that Freedom's Watch requires all such requests be made in writing and by mail. *Id.* Mr. Quaranta advised both Mr. Teague and Mr. Damschen that it was his understanding Freedom's Watch was required to provide him the forms in response to his in-person request, but was told, "this is just the way we do things." *Id.* Freedom's Watch refused to supply Mr. Quaranta with the requested tax forms. *Id.*

Accordingly, Freedom's Watch violated the public disclosure requirements of the Internal Revenue Code when it refused to provide Mr. Quaranta with a copy of its application for exemption and its Form 990s upon his in-person request. Ethics Watch respectfully requests that the IRS impose penalties on Freedom's Watch for these violations.

#### *Western Skies Coalition*

Western Skies Coalition registered in Colorado as a foreign nonprofit corporation in April 2008. *See* Statement of Foreign Entity Authority, dated April 2, 2008 (attached as Exhibit N). It does not appear to have filed any reports with the IRS. Its stated purpose is to promote "issues that make our nation great." *See* Western Skies Coalition website, <http://www.westernskiescoalition.org/>.

Western Skies Coalition's educational, social welfare activities are sparse. Its website invites browsers to "get involved" by signing up for email and text alerts, but no such alerts appear on its site. Like AFF, CEG and Freedom's Watch, Western Skies Coalition also re-posts news stories on its website from other media outlets.

Western Skies Coalition's apparently nominal tax exempt activities pale in comparison to its non-educational, partisan activities. In Colorado alone, Western Skies Coalition has purchased over \$460,000 in television advertisements attacking "liberal politicians" and touting numerous named Republican candidates for the Colorado state legislature. *See* Comcast Spotlight Agreements to Purchase Advertising that May Reference a Political Candidate Availabilities, dated July 15 2008, August 19, 2008, August 20, 2008, August 25, 2008, August 28, 2008 (attached as Exhibit O).

Much like AFF, CEG and Freedom's Watch, Western Skies Coalition appears to have devoted well over half of its efforts and resources to partisan, political advertisements in violation of its 501(c)(4) tax status.

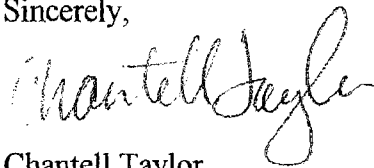
#### **Conclusion**

Based on the foregoing, Ethics Watch respectfully requests that the IRS investigate the activities of American Future Fund, Coloradans for Economic Growth, Freedom's Watch and

Western Skies Coalition to determine whether these organizations devote more than half of their resources and efforts to activities that are not related to promoting the welfare of a community. Each of these organizations appears to be abusing their tax exempt status to enjoy the benefits of unfettered, undisclosed fundraising while also engaging in otherwise heavily regulated campaign activities. Ethics Watch asks that the IRS impose all applicable taxes and penalties provided by law.

Thank you for your consideration of this important matter. Please contact me if I can provide additional information or be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Chantell Taylor". The signature is written in a cursive, flowing style.

Chantell Taylor  
Director  
Colorado Ethics Watch

Enclosures

cc: IRS – EO Classification, Dallas