

FILED

OCT 14 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

EVERGREEN FREEDOM
FOUNDATION d/b/a FREEDOM
FOUNDATION,

Defendant.

NO. 15-2-01936-5

COMPLAINT FOR CIVIL
PENALTIES AND FOR
INJUNCTIVE RELIEF FOR
VIOLATIONS OF RCW 42.17A

I. NATURE OF ACTION

The State of Washington ("State") brings this action to enforce the state's campaign finance disclosure law, RCW 42.17A. The State alleges that Defendant, EVERGREEN FREEDOM FOUNDATION d/b/a FREEDOM FOUNDATION ("Freedom Foundation"), violated provisions of RCW 42.17A by failing to properly report independent expenditures made in support of certain local ballot propositions. The State seeks relief under RCW 42.17A.750 and .765, including penalties, costs and fees, and injunctive relief.

///

///

///

1 **II. PARTIES**

2 1.1 Plaintiff is the State of Washington. Acting through the Washington State
3 Public Disclosure Commission, Attorney General, or local prosecuting attorney, the
4 State enforces the state campaign finance disclosure laws contained in RCW 42.17A.

5 1.2 Defendant, Freedom Foundation, is an active nonprofit corporation with a
6 primary place of business in Thurston County, Washington.

7 **III. JURISDICTION AND VENUE**

8 2.1 This Court has subject matter jurisdiction over the Freedom Foundation in
9 accordance with RCW 42.17A. The Attorney General has authority to bring this action
10 pursuant to RCW 42.17A.765.

11 2.2 The Freedom Foundation's actions which form the basis for the violations
12 alleged below occurred in whole or in part, in Thurston County, Washington.

13 2.3 Venue is proper in this Court pursuant to RCW 4.12.

14 **IV. FACTUAL ALLEGATIONS**

15 3.1 RCW 42.17A.005(4) defines a "ballot proposition" to include any
16 initiative, proposed to be submitted to the voters of any municipal corporation, from
17 and after the time when the proposition has been initially filed with the appropriate
18 election officer of that constituency.

19 3.2 RCW 42.17A.255 defines the term "independent expenditure" to include
20 any expenditure that is made in support of or in opposition to any ballot proposition and is
21 not otherwise required to be reported pursuant to RCW 42.17A.220, RCW 42.17A.235,
22 and RCW 42.17A.240. The report is entitled in relevant part, "Reporting Form for:
23 Independent Expenditures" and is designated by the Commission as form C-6, pursuant
24 to WAC 390-16-060.

25 3.3 In approximately February 2014, an employee of the Freedom Foundation
26 created a set of sample ordinances/ballot propositions designed to be used by residents of

1 Washington to change local laws related to collective bargaining between municipalities
2 and their employee bargaining representatives. Information about these sample
3 ordinances/ballot propositions was disseminated to Freedom Foundation members and
4 made publicly available on the Freedom Foundation's website.

5 3.4 The sample ordinance/ballot propositions addressed two issues: 1) a
6 prohibition of union security clauses, public work stoppages, and gifting of public funds to
7 benefit unions; and 2) a requirement that collective bargaining sessions to negotiate a
8 contract between a local jurisdiction and a bargaining unit representative of the
9 jurisdiction's employees be open to the public.

10 3.5 Four groups of local community activists obtained the documents from the
11 Freedom Foundation website. These activists then circulated the petitions and obtained
12 signatures from citizens in their communities. The communities involved included the
13 cities of Sequim, Shelton, and Chelan.

14 3.6 Sequim: On or about July 28, 2014, Sequim resident Susan Brautigam filed
15 her ballot propositions and the corresponding signatures she gathered with the Clallam
16 County Auditor's Office. On September 8, 2014, the Sequim City Council discussed her
17 ballot propositions. The Sequim City Council did not take action on Ms. Brautigam's
18 submissions.

19 3.7 On or about September 3, 2014, a lawsuit was filed in Clallam County
20 Superior Court on Ms. Brautigam's behalf: *Susan Brautigam v. City of Sequim, et al.*,
21 Case No. 14-2-00771-2. The lawsuit requested that the court order the propositions be
22 placed on the ballot.

23 3.8 Freedom Foundation staff member David Dewhirst appeared as counsel for
24 Ms. Brautigam. During all times relevant to that lawsuit Mr. Dewhirst represented Ms.
25 Brautigam in her effort to compel the two ballot propositions to be placed on the ballot for
26 a vote by the citizens of Sequim. During all times relevant to that lawsuit the Freedom

1 Foundation paid Mr. Dewhirst his normal salary to pursue this litigation. Tom McCabe,
2 in his capacity as Chief Executive Officer for the Freedom Foundation, authorized Mr.
3 Dewhirst to participate in these litigation efforts. Ms. Brautigam did not pay for Mr.
4 Dewhirst's legal services.

5 3.9 Chelan: On or about September 10, 2014, Chelan residents Edson Clark
6 and Al Lorenz filed their ballot propositions and the corresponding signatures they
7 gathered with the Chelan County Clerk's Office. On September 25, 2014, the Chelan City
8 Council discussed the submitted ballot propositions. The Chelan City Council then
9 directed its city attorney to file an action to determine the validity of the ordinance/ballot
10 proposition.

11 3.10 On or about November 21, 2014, a lawsuit was filed in Chelan County
12 Superior Court on Messrs. Clark and Lorenz behalf: *Edson Clark and Al Lorenz v. City of*
13 *Chelan*, et al., Case No. 14-2-01095-2. The lawsuit requested that the court order the
14 propositions be placed on the ballot.

15 3.11 Freedom Foundation staff member David Dewhirst appeared as counsel for
16 Messrs. Clark and Lorenz. During all times relevant to that lawsuit Mr. Dewhirst
17 represented them in their efforts to compel the two ballot propositions to be placed on the
18 ballot for a vote by the citizens of Chelan. During all times relevant to that lawsuit the
19 Freedom Foundation paid Mr. Dewhirst his normal salary to pursue this litigation. Tom
20 McCabe, in his capacity as Chief Executive Officer for the Freedom Foundation,
21 authorized Mr. Dewhirst to participate in these litigation efforts. Neither Mr. Clark nor
22 Mr. Lorenz paid Mr. Dewhirst for his legal services.

23 3.12 Shelton: On or about August 7, 2014, Shelton resident Diane Good filed
24 her ballot propositions and the corresponding signatures she gathered with the Shelton
25 City Clerk's Office. On September 8, 2014, the Shelton City Council discussed the
26

1 submitted ballot propositions. The City Council declared the ordinance/ballot proposition
2 invalid and took no further action.

3 3.13 On or about October 6, 2014, a lawsuit was filed in Mason County Superior
4 Court on Ms. Good's behalf: *Diane Good v. City of Shelton, et al.*, Case
5 No. 14-2-00555-9. The lawsuit requested that the court order the propositions be placed
6 on the ballot.

7 3.14 Freedom Foundation staff member David Dewhirst appeared as counsel for
8 Ms. Good. During all times relevant to that lawsuit Mr. Dewhirst represented her in her
9 efforts to compel the two ballot propositions to be placed on the ballot for a vote by the
10 citizens of Shelton. During all times relevant to that lawsuit the Freedom Foundation paid
11 Mr. Dewhirst his normal salary to pursue this litigation. Tom McCabe, in his capacity as
12 Chief Executive Officer for the Freedom Foundation, authorized Mr. Dewhirst to
13 participate in these litigation efforts. Ms. Good did not pay Mr. Dewhirst for his legal
14 services.

15 3.15 In each of the aforementioned lawsuits, the plaintiffs requested that the
16 superior court order the municipality in question to put their ballot proposition(s) to a vote
17 of the residents of their respective cities. Between approximately December and March
18 2015, each superior court refused to so order, and dismissed the cases. No appeals were
19 taken from each case.

20 3.16 Freedom Foundation should have reported, as independent expenditures, its
21 resources, including the value of the services provided by its staff to the plaintiffs in
22 support of the respective ballot proposition(s).

23 V. CLAIM

24 The State re-alleges and incorporates by reference all the factual allegations
25 contained in the preceding paragraphs, and based on those allegations, makes the
26 following claim:

1 4.1 First Claim: The State reasserts the factual allegations made above and
2 further asserts that the Freedom Foundation, in violation of RCW 42.17A.255, failed to
3 properly and timely file reports with the state Public Disclosure Commission of its
4 independent expenditures made in support of ballot propositions filed in the cities of
5 Sequim, Chelan, and Shelton, to include the disclosure of the value of legal services
6 provided to the ballot propositions proponents in relation to the lawsuits described above.

7 **VI. REQUEST FOR RELIEF**

8 WHEREFORE, the State requests the following relief as provided by statute:

9 5.1 For such remedies as the court may deem appropriate under RCW
10 42.17A.750, including but not limited to imposition of a civil penalty, all to be
11 determined at trial;


12 5.2 For all costs of investigation and trial, including reasonable attorneys'
13 fees, as authorized by RCW 42.17A.765(5);

14 5.3 For temporary and permanent injunctive relief, as authorized by RCW
15 42.17A.750(1)(h); and

16 5.4 For such other legal and equitable relief as this Court deems appropriate.

17 DATED this 14 day of October, 2015.

18 ROBERT W. FERGUSON
19 Attorney General

20 
21 LINDA A. DALTON, WSBA No. 15467
22 Senior Assistant Attorney General
23 CHAD C. STANDIFER, WSBA No. 29724
24 Assistant Attorney General
25 Attorneys for Plaintiff State of Washington
26