

FILED

JAN 31 2020

Superior Court
Linda Myhre Enlow
Thurston County Clerk

Hearing date: January 31, 2020
Hearing time: 9:00 a.m.
Judge/Calendar: Hon. John C. Skinder

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

PARTIAL JUDGMENT AGAINST
DEFENDANT FREEDOM
FOUNDATION ON VIOLATIONS

~~[PROPOSED]~~ *RS*

THIS MATTER came for hearing before the Court on January 31, 2020 on Plaintiff State of Washington's (State) Agreed Motion for a Partial Judgment Against Defendant Freedom Foundation on Violations. Plaintiff State of Washington appeared and was represented by Assistant Attorney General S. Todd Sipe; Defendant Freedom Foundation ^{did not} ~~appeared and was represented by Mark C. Lamb,~~ The Court reviewed the records and pleadings on file and heard oral arguments from the parties. The Court hereby makes the following:

I. FINDINGS OF FACT

1. In 2014, an employee of the Defendant Freedom Foundation created a set of sample ordinances/ballot propositions to be used by residents of Washington to change local

1 laws related to collective bargaining between municipalities and their employee bargaining
2 representatives.

3 2. Sequim resident Susan Brautigam filed two Freedom Foundation-prepared ballot
4 propositions and corresponding signatures she gathered for those ballot propositions with the
5 Clallam County Auditor's Office.

6 3. On September 3, 2014, Ms. Brautigam filed a lawsuit in Clallam County Superior
7 Court requesting that the court order the propositions be placed on the ballot: *In Re: Susan*
8 *Brautigam v. City of Sequim, et al.*, Case No. 14-2-00771-2.

9 4. Freedom Foundation staff member David Dewhirst appeared as counsel and
10 represented Ms. Brautigam in the lawsuit. Freedom Foundation paid Mr. Dewhirst his normal
11 salary to pursue this litigation.

12 5. Tom McCabe, in his capacity as Chief Executive Officer for Defendant Freedom
13 Foundation, authorized Mr. Dewhirst to participate in this litigation. Ms. Brautigam did not pay
14 Mr. Dewhirst for his legal services.

15 6. The Clallam County Superior Court entered summary judgment against
16 Ms. Brautigam on December 8, 2014. Mr. Dewhirst's work on the lawsuit began in August 2014
17 and continued until the Court entered summary judgment in December 2014.

18 7. Freedom Foundation's expenditures for Mr. Dewhirst's work on Ms. Brautigam's
19 lawsuit seeking to have two ballot propositions placed on the ballot in Sequim was \$6,322.40.

20 8. Freedom Foundation did not file any C-6 reports with the Public Disclosure
21 Commission disclosing its expenditures for Mr. Dewhirst's work supporting the ballot
22 propositions submitted by Ms. Brautigam until July 2, 2019.

1 9. In August 2014, Shelton resident Diane Good filed two Freedom Foundation-
2 prepared ballot propositions and corresponding signatures she gathered with the Shelton City
3 Clerk's Office.

4 10. On October 6, 2014, Ms. Good filed a lawsuit in Mason County Superior Court
5 requesting that the court order the propositions be placed on the ballot: *Diane Good v. City of*
6 *Shelton, et al.*, Case No. 14-2-00555-9.

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8 11. Freedom Foundation staff member David Dewhirst appeared as counsel and
9 represented Ms. Good in the lawsuit. Freedom Foundation paid Mr. Dewhirst his normal salary
10 to pursue this litigation.

11 12. Tom McCabe, in his capacity as Chief Executive Officer for Defendant Freedom
12 Foundation, authorized Mr. Dewhirst to participate in this litigation. Ms. Good did not pay
13 Mr. Dewhirst for his legal services.

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15 13. The Mason County Superior Court entered summary judgment against Ms. Good
16 on January 2, 2015. Mr. Dewhirst's work on the lawsuit began in September 2014 and continued
17 until the Court entered summary judgment in January 2015.

18 14. Freedom Foundation's expenditures for Mr. Dewhirst's work on Ms. Good's
19 lawsuit seeking to have two ballot propositions placed on the ballot in Shelton was \$1,730.76.

20 15. Freedom Foundation did not file any C-6 reports with the Public Disclosure
21 Commission disclosing its expenditures for Mr. Dewhirst's work supporting the ballot
22 propositions submitted by Ms. Good until July 2, 2019.
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1 16. In September 2014, Chelan residents Edson Clark and Al Lorenz filed two
2 Freedom Foundation-prepared ballot propositions and corresponding signatures they gathered
3 with the Chelan County Clerk's Office.

4 17. On November 21, 2014, Messrs. Clark and Lorenz filed a lawsuit in Chelan
5 County Superior Court requesting that the court order the propositions be placed on the ballot:
6 *Clark v. City of Chelan*, Case No. 14-2-01095-2.
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8 18. Freedom Foundation staff member David Dewhirst appeared as counsel and
9 represented Messrs. Clark and Lorenz in the lawsuit. Freedom Foundation paid Mr. Dewhirst his
10 normal salary to pursue this litigation.

11 19. Tom McCabe, in his capacity as Chief Executive Officer for Defendant Freedom
12 Foundation, authorized Mr. Dewhirst to participate in this litigation. Messrs. Clark and Lorenz
13 did not pay Mr. Dewhirst for his legal services.
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15 20. The Chelan County Superior Court entered summary judgment against
16 Messrs. Clark and Lorenz on March 11, 2015. Mr. Dewhirst's work on the lawsuit began in
17 November 2014 and continued until the Court entered summary judgment in March 2015.

18 21. Freedom Foundation's expenditures for Mr. Dewhirst's work on Messrs. Clark
19 and Lorenz's lawsuit seeking to have two ballot propositions placed on the ballot in Shelton was
20 \$1,730.76.
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22 22. The State's enforcement action on the above facts was dismissed by Thurston
23 County Superior Court on May 17, 2016, a decision that was reversed on November 7, 2017.
24 This decision was reviewed and upheld by the State Supreme Court in a 5-4 decision on
25 January 10, 2019. The United States Supreme Court denied cert on May 28, 2019.
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1 23. Freedom Foundation did not file any C-6 reports with the Public Disclosure
2 Commission disclosing its expenditures for Mr. Dewhirst's work supporting the ballot
3 propositions submitted by Messrs. Clark and Lorenz until July 2, 2019.

4 24. There was no election on any of the ballot measures at issue in this case.
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6 II. CONCLUSIONS OF LAW

7 Based on these undisputed facts, the Court makes the following determinations as a
8 matter of law:

9 1. The value of legal services provided by Freedom Foundation staff member David
10 Dewhirst from August 2014 through March 2015 in lawsuits seeking to have ballot propositions
11 placed on the ballot in Sequim, Shelton and Chelan constituted "independent expenditures" as
12 defined in RCW 42.17A.255 that were required to be reported to the Public Disclosure
13 Commission.
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15 2. The Freedom Foundation was required to report these independent expenditures
16 in C-6 reports filed with the Public Disclosure Commission each month from August 2014 to
17 April 2015. Freedom Foundation violated RCW 42.17A.255 by failing to timely file these C-6
18 reports.

19 3. Freedom Foundation was required to file an initial C-6 report on or before August
20 30, 2014, or within five days of the date that Mr. Dewhirst began work on Ms. Brautigam's
21 lawsuit in Clallam County Superior Court. The information required for this report was filed on
22 July 2, 2019.
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1 4. Freedom Foundation was required to file a C-6 report for the independent
2 expenditures incurred during the remainder of the August 2014 reporting period on
3 September 10, 2014. The information required for this report was filed on July 2, 2019.

4 5. Freedom Foundation was required to file a C-6 report for the independent
5 expenditures incurred during the September 2014 reporting period on October 10, 2014. The
6 information required for this report was filed on July 2, 2019.

7 6. Freedom Foundation was required to file a C-6 report for the October 2014
8 reporting period on November 10, 2014. The information required for this report was filed on
9 July 2, 2019.

10 7. Freedom Foundation was required to file a C-6 report for the November 2014
11 reporting period on December 10, 2014. The information required for this report was filed on
12 July 2, 2019.

13 8. Freedom Foundation was required to file a C-6 report for the December 2014
14 reporting period on January 10, 2015. The information required for this report was filed on
15 July 2, 2019.

16 9. Freedom Foundation was required to file a C-6 report for the January 2015
17 reporting period on February 10, 2015. The information required for this report was filed on
18 July 2, 2019.

19 10. Freedom Foundation was required to file a C-6 report for the February 2015
20 reporting period on March 10, 2015. The information required for this report was filed on
21 July 2, 2019.

1 11. Freedom Foundation was required to file a C-6 report for the March 2015
2 reporting period on April 10, 2014. The information required for this report was filed on
3 July 2, 2019.

4 **III. ORDER**

5 Based on these determinations, it is HEREBY ORDERED as follows:

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7 1. Freedom Foundation is determined to have violated State campaign finance laws
8 on nine occasions by failing to timely file C-6 reports for their independent expenditures in
9 support of local ballot propositions from August 2014 to March 2015.

10 2. Freedom Foundations violations of the law having been determined, this case
11 shall proceed on the issue of determining the appropriate penalty and potential fees and costs
12 award to be assessed against Freedom Foundation for their established violations of
13 RCW 42.17A, after which the Court shall set the judgment by separate order.

14 DATED this 31st day of JANUARY 2020.

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17 
18 THE HONORABLE JOHN C. SKINDER

19 PRESENTED BY:
20 ROBERT W. FERGUSON
21 Attorney General

22 s/ S. Todd Sipe
23 S. TODD SIPE, WSBA #23203
24 ZEBULAR J. MADISON, WSBA #37415
25 Assistant Attorneys General
26 *Attorneys for Plaintiff State of Washington*

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APPROVED AS TO FORM:

THE NORTH CREEK LAW FIRM

s/ Mark Lamb
MARK LAMB, WSBA #30134
Attorney for Defendant Freedom Foundation