

FILED

FEB - 6 2017

Superior Court  
Linda Myers Eloff  
Thurston County Clerk

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

NATIONAL AUDUBON SOCIETY,  
INC., a charity registered in Washington,  
dba AUDUBON WASHINGTON,

Defendant.

NO. 17-2-00378-34

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 NATIONAL AUDUBON SOCIETY, INC., a charity registered in Washington, doing business in Washington as AUDUBON WASHINGTON, violated provisions of RCW 42.17A by failing to timely disclose independent expenditures it made during 2016 in support of the statewide ballot proposition Initiative 732. The State seeks relief under RCW 42.17A.750 and .765, including penalties, costs and fees, and injunctive relief.

II. PARTIES

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

1           2.2     Defendant NATIONAL AUDUBON SOCIETY, INC. (Audubon WA) is a non-  
2 profit organization headquartered in New York City that is registered as a charity with the  
3 Washington Secretary of State, doing business in Washington as Audubon Washington. In its  
4 support for the 2016 statewide ballot proposition Initiative 732, Audubon WA made  
5 independent expenditures triggering its obligation to report these expenditures but failed to  
6 timely disclose them as it was required to do by law.

### 7                               **III.           JURISDICTION AND VENUE**

8           3.1     This Court has subject matter jurisdiction over the present case, in accordance  
9 with RCW 42.17A. The Attorney General has authority to bring this action pursuant to  
10 RCW 42.17A.765.

11          3.2     This Court has personal jurisdiction over Audubon WA, a national organization  
12 with active membership and representatives in the State of Washington. Additionally, the acts  
13 and omissions complained of here took place, at least in part, in Thurston County. By its  
14 conduct alleged below, Audubon WA caused untimely disclosure reports to be filed with the  
15 Public Disclosure Commission (PDC) in Thurston County, Washington.

16          3.3     Venue is proper in this Court pursuant to RCW 4.12.020(1).

### 17                               **IV.           FACTUAL ALLEGATIONS**

18          4.1     RCW 42.17A declares as a matter of public policy “[t]hat political campaign  
19 and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is  
20 to be avoided.” RCW 42.17A.001(1). The statute further provides that the state’s campaign  
21 finance and disclosure law “shall be liberally construed to promote complete disclosure of all  
22 information respecting the financing of political campaigns.”

23          4.2     Under Washington’s campaign finance law, expenditures supporting or  
24 opposing a state ballot proposition are required to be publicly reported. Expenditures may be  
25 reported either as direct or in-kind contributions to the political committees organized to  
26 campaign in support or opposition to ballot measures, or as independent expenditures. A

1 contribution is defined to include “[a]n expenditure made by a person in cooperation,  
2 consultation, or concert with, or at the request or suggestion of, a candidate, a political  
3 committee, the person or persons named on the candidate’s or committee’s registration form  
4 who direct expenditures on behalf of the candidate or committee, or their agents.” RCW  
5 42.17A.005(13)(a)(ii). “[T]he term ‘independent expenditure’ means any expenditure that is  
6 made in support of or in opposition to any candidate or ballot proposition and is not otherwise  
7 required to be reported pursuant to [statutes governing contributions to political committees].”  
8 RCW 42.17A.255(1). Both cash and in-kind expenditures are reportable under the law.

9       4.3     Persons who make expenditures valued at an aggregate amount of one hundred  
10 dollars or more in support or in opposition to a ballot proposition are required to disclose the  
11 same.

12       4.4     Persons making independent expenditures are required to file reports with the  
13 PDC, which in turn makes these reports available to the public on its website at  
14 [www.pdc.wa.gov](http://www.pdc.wa.gov). The PDC created a form “C6” for disclosing independent expenditures.  
15 WAC 390-16-060. Form C-6 calls for disclosure of the amounts spent in support of, or in  
16 opposition to, a ballot proposition by persons making independent expenditures.

17       4.5     Audubon WA’s mission is focused on the protection of birds and their habitats  
18 and environment. In July 2016, Audubon WA announced that it had decided to support  
19 Initiative 732, a statewide ballot proposition.

20       4.6     The official ballot title for Initiative 732 states: “This measure would impose a  
21 carbon emission tax on certain fossil fuels and fossil-fuel-generated electricity, reduce the sales  
22 tax by one percentage point and increase a low-income exemption, and reduce certain  
23 manufacturing taxes.”

24       4.7     One way Audubon supported Initiative 732 was by paying its Washington  
25 Executive Director to participate in interviews with members of the news media during which  
26 she promoted Initiative 732. One such interview was recorded with Fox News on July 15,

1 2017, and aired on August 2, 2016. Audubon WA's Executive Director again spoke with the  
2 Seattle Times and supported Initiative 732 in an article published August 13, 2016. The value  
3 of her time participating in these interviews totaled approximately \$50.

4 4.8 Audubon WA paid its staff members to draft and record a pro-Initiative 732  
5 video statement beginning on August 19, 2016. Audubon WA's Executive Director presented  
6 the message for TVW's Video Voters Guide in support of Initiative 732. Taping of the  
7 segment occurred at TVW's studios in Olympia on August 23, 2016, and Audubon WA paid  
8 its Executive Director for her time spent between August 19 and August 23, 2016 on the video  
9 statement, which totaled \$342.91.

10 4.9 Audubon WA formed and registered a political committee by filing a Political  
11 Committee Registration (PDC form C-1pc) on October 20, 2016. Thereafter, on October 24,  
12 and October 29, 2016, the committee disclosed Audubon WA's paid staff time devoted to  
13 supporting Initiative 732. The reported total of \$16,000 in paid staff time apparently includes  
14 the payments to Audubon WA's Washington Executive Director as alleged above.

15 4.10 Prior to registering its political committee, Audubon WA made expenditures for  
16 staff members to advocate the general public to approve I-732 on July 15, 2016, on or around  
17 August 13, 2016, on August 19, 2016, and August 23, 2016. Expenses exceeding \$100, and not  
18 reportable as in-kind contributions to Carbon Washington, the political committee formed to  
19 promote Initiative 732, were required to be disclosed by Audubon WA within five days on  
20 form C-6 as independent expenditures, or failing that, as the activity of Audubon WA's own  
21 political committee.

22 4.11 Audubon WA first exceeded the \$100 threshold for independent expenditure  
23 reporting on August 19, 2016, by paying its Executive Director to begin work on the Video  
24 Voters' Guide. Audubon WA's form C-6 report of independent contributions totaling \$342.91  
25 should have been filed by August 24, 2016. These expenditures were not disclosed until  
26

1 Audubon WA's political committee filed a form C-4 on October 24, 2016. The disclosure  
2 occurred 61 days after the deadline to file the corresponding report.

3 **V. CLAIMS**

4 Plaintiff re-alleges and incorporates by reference all the factual allegations contained in  
5 the preceding paragraphs, and based on those allegations, makes the following claims:

6 5.1 First Claim: Plaintiff reasserts the factual allegations made above and further  
7 asserts that Defendant, in violation of RCW 42.17A.255, failed to timely disclose independent  
8 expenditures to the Public Disclosure Commission that it filed 61 days late.

9 **VI. REQUEST FOR RELIEF**

10 WHEREFORE, Plaintiff requests the following relief as provided by law:

11 6.1 For such remedies as the court may deem appropriate under RCW 42.17A.750,  
12 including but not limited to imposition of a civil penalty, all to be determined at trial;

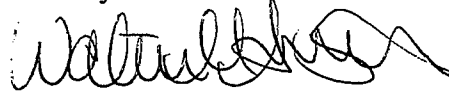
13 6.2 For all costs of investigation and trial, including reasonable attorneys' fees, as  
14 authorized by RCW 42.17A.765(5);

15 6.3 For temporary and permanent injunctive relief, as authorized by RCW  
16 42.17A.750(1)(h); and

17 5.4 For such other legal and equitable relief as this Court deems appropriate.

18 DATED this 3rd day of February, 2017.

19 ROBERT W. FERGUSON  
20 Attorney General

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22 LINDA A. DALTON, WSBA No. 15467  
23 Senior Assistant Attorney General  
24 WALTER M. SMITH, WSBA No. 46695  
25 Assistant Attorney General  
26 Attorneys for Plaintiff State of Washington