

FILED

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Superior Court
Linda Myhre Enlow
Thurston County Clerk

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**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

EVERGREEN FREEDOM
FOUNDATION, a Washington
nonprofit corporation, d/b/a FREEDOM
FOUNDATION,

Defendant.

NO. 19-2-04952-34

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 and disclosure law, RCW 42.17A. The State alleges that Defendant EVERGREEN FREEDOM FOUNDATION, a Washington nonprofit corporation, d/b/a FREEDOM FOUNDATION, violated provisions of RCW 42.17A by failing to report independent expenditures made to oppose Initiative 1, a 2016 City of Olympia ballot proposition. The State seeks relief under RCW 42.17A.750 and .780, including civil penalties, costs and fees, and injunctive relief.

1 **II. PARTIES**

2 1.1 Plaintiff is the State of Washington. Acting through the Washington State Public
3 Disclosure Commission, Attorney General, or a local prosecuting attorney, the State enforces
4 the state campaign finance disclosure laws contained in RCW 42.17A.
5

6 1.2 Defendant EVERGREEN FREEDOM FOUNDATION, a Washington nonprofit
7 corporation, d/b/a FREEDOM FOUNDATION (the Freedom Foundation) is a Washington
8 nonprofit corporation headquartered in Olympia, Washington.

9 **III. JURISDICTION AND VENUE**

10 2.1 This Court has subject matter jurisdiction over the present case, in accordance
11 with RCW 42.17A. The Attorney General has authority to bring this action pursuant to
12 RCW 42.17A.765.
13

14 2.2 This Court has personal jurisdiction over the Freedom Foundation, a Washington
15 corporation headquartered in the City of Olympia. Additionally, the acts and omissions alleged
16 below occurred in whole or in part, in Thurston County.

17 2.3 Venue is proper in this Court pursuant to RCW 4.12.020(1).

18 **IV. FACTUAL ALLEGATIONS**

19 3.1 RCW 42.17A declares as a matter of public policy “[t]hat political campaign and
20 lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be
21 avoided.” RCW 42.17A.001(1). The statute further provides that the state’s campaign finance
22 and disclosure law “shall be liberally construed to promote complete disclosure of all
23 information respecting the financing of political campaigns” RCW 42.17A.001.
24

25 3.2 RCW 4.17A.005(4) defines a “ballot proposition” to include any initiative,
26 proposed to be submitted to the voters of any municipal corporation, from and after the time

1 when the proposition has been initially filed with the appropriate election officer of that
2 constituency.

3 3.3 “[T]he term ‘independent expenditure’ means any expenditure that is made in
4 support of or in opposition to any candidate or ballot proposition and is not otherwise required
5 to be reported pursuant to [statutes governing contributions to political committees].”
6 RCW 42.17A.255(1). Both cash and in-kind expenditures, including paid staff time for an
7 employee’s political activity, are reportable under the law. Persons making independent
8 expenditures are required by law to file reports with the PDC, which in turn makes these reports
9 available to the public on its website at www.pdc.wa.gov. The PDC created a form “C-6” for
10 disclosing independent expenditures. WAC 390-16-060. Form C-6 calls for disclosure of the
11 amounts spent in support of, or in opposition to, a ballot proposition by persons making
12 independent expenditures.
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15 3.4 The City of Olympia is a noncharter code city, Oly. Mun. Code (OMC)
16 § 1.08.010, operating under the commission form of government. OMC § 1.08.020. The
17 Olympia City Council retains the powers of initiative and referendum. OMC § 1.16.010. As
18 such, “[o]rdinances may be initiated by petition of registered voters of the city filed with the
19 [City of Olympia].” RCW 35.17.260. Citizens may present an initiative petition calling for the
20 enactment of a piece of City legislation, with sufficient signatures, and containing “a request
21 that, unless passed by the commission, the ordinance be submitted to a vote of the registered
22 voters of the city[;]” the City Council must then either enact the legislation into law within 20
23 days after the Thurston County Auditor certifies there are sufficient signatures, or cause the
24 initiative to be voted on by city residents. RCW 35.17.260(1)-(2).
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1 3.5 On April 5, 2016, a registered political committee, Opportunity for Olympia,
2 began to circulate an initiative petition for signatures. The petition called for the City of Olympia
3 to enact a progressive income tax of 1.5% on households with incomes of \$200,000 or greater,
4 or if the Council did not enact the tax, to refer the matter for a vote by city residents. Proceeds
5 from the tax would be used to fund college tuition for needy college bound Olympia residents.
6

7 *The Freedom Foundation Expenditures in Opposition to Initiative 1*

8 3.6 Soon after Opportunity for Olympia began circulating the petition for signatures,
9 Defendant Freedom Foundation began to mobilize opposition to the Initiative 1 petition. As
10 detailed below, Defendant Freedom Foundation paid its staff to disseminate opposition
11 messaging in podcasts, articles published in news media, at least one e-mail to one Defendant
12 Freedom Foundation listserv, and on Defendant's Freedom Foundation's website, attempting to
13 influence the Olympia community to oppose the initiative petition, and to take action at a City
14 Council meeting to make their opinions known.
15

16 3.7 Defendant Freedom Foundation also paid its staff to support litigation to prevent
17 a public vote on Initiative 1. Defendant Freedom Foundation paid its staff to prepare and file an
18 *amicus curiae* brief in support of the City's effort to block a public vote on Initiative 1.
19

20 3.8 The Freedom Foundation failed to disclose these independent expenditures in
21 required filings with the Public Disclosure Commission.

22 3.9 Defendant Freedom Foundation paid its staff to record a podcast discussing the
23 initiative petition for approximately 13 minutes, which it then publicly released on or around
24 May 7, 2016. During the podcast, Freedom Foundation Managing Editor Jeff Rhodes prompted
25 Freedom Foundation Policy Analyst Amber Gunn to discuss Initiative 1 and "why it's so
26 ridiculous." Rhodes stated in the interview that there was an "obvious inequity" to the proposal,

1 and characterized it as “a free chance to spend somebody else’s money.” Gunn agreed, and
2 commented that the petition sponsors were “doing this because they want to push the line. This
3 isn’t about paying for scholarships—this is about passing an income tax and bringing a Supreme
4 Court challenge.” During her comments, Gunn stated that the Washington Supreme Court had
5 declared that “income taxes are illegal.” She called the Initiative 1 petition “alarming,” and
6 commented that “we would absolutely lose one of our greatest comparative advantages as a state
7 if something like this were to pass in Washington.” Rhodes commented that “even if the initiative
8 is submitted legally,” the City had the option not to allow the measure to appear on the ballot,
9 which he characterized as “a positive outcome.”
10

11 3.10 On or around May 21, 2016, Defendant Freedom Foundation publicly released a
12 podcast discussing Initiative 1, which lasted approximately 7 minutes. Defendant Freedom
13 Foundation again paid its staff to record and distribute this podcast. During the podcast, Freedom
14 Foundation Managing Editor Jeff Rhodes stated of the Olympia initiative petition, “this whole
15 thing is kind of a Trojan horse to – to basically run the idea of instituting a statewide income tax,
16 so like a lot of things, it’s starting off on the local level.” Senior Legal Fellow Jim Johnson stated,
17 “Well, there are two things that are wrong with [the initiative petition]: one, it’s illegal, and two,
18 it’s unconstitutional.” The Freedom Foundation staff members discussed what they believed to
19 be the unconstitutionality of the petition, and Johnson concluded that “when it’s filed with the
20 auditor, it will not be placed on the ballot; they’ll have to sue the auditor.”
21
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23 3.11 On or around May 26, 2016, Freedom Foundation Policy Analyst Amber Gunn
24 wrote and published an opinion article in Olympia newspaper *The Olympian*. Her byline
25 identified her as an employee of Defendant Freedom Foundation. The article was titled “Olympia
26 income tax would open Pandora’s box.” Gunn’s article argued there were “multiple

1 inconsistencies and flaws” in the initiative petition, and suggested that the proposal would be
2 unworkable or lead to costly litigation. She called the initiative petition a “classic ‘lipstick on a
3 pig’ scheme,” and closed by calling on the reader to “protect one of our most precious
4 competitive advantages in tax policy: no income tax.”

5
6 3.12 On July 6, 2016, Opportunity for Olympia presented the signatures gathered on
7 its initiative petition to the City. The City then referred the signatures to the Thurston County
8 Auditor’s Office for counting and verification. Within the following days, the County Auditor
9 certified that sufficient signatures had been gathered to require the City to enact or refer the
10 initiative for a vote of the people.

11
12 3.13 Freedom Foundation Senior Policy Analyst Jami Lund sent an e-mail from his
13 Freedom Foundation e-mail account to a list of addresses belonging to the Freedom Foundation
14 on July 11, 2016, urging them to contact members of the Olympia City Council or attend a
15 Council meeting to take place the next evening. Lund’s e-mail stated that the “City of Olympia
16 has been targeted by the union-backed ‘Economic Opportunity Institute’ of Seattle for an
17 experiment to impose a city income tax.” He went on to describe the initiative petition as a
18 “scheme,” and a “plan to plunder some Olympia citizens to fund public higher education
19 institutions.” He urged the recipients to contact City Council members “about forcing a minority
20 of citizens in Olympia to fund the public college tuition of others.” The e-mail encouraged
21 attendance at the July 12 City Council meeting with the closing remark, “[y]ou can bet that the
22 other side is going to be there.”

23
24 3.14 The Olympia City Council held a public meeting on July 12, 2016 during which
25 public comment was heard about the initiative petition. Mr. Lund, introducing himself as an
26 employee of the Freedom Foundation, presented prepared remarks, referring to a printed page

1 on the lectern, during the public comment period at the meeting. Mr. Lund expressed his own
2 and the Freedom Foundation's opposition to the initiative petition. He argued that the initiative
3 petition was "absurdly unfair and immoral" in requiring a progressive income tax; he claimed
4 that it was "absurd for the city to inject itself into higher education policy," and "the initiative is
5 unconstitutional." He stated the Freedom Foundation would be "looking at litigation" if the
6 proposal became law.
7

8 3.15 On July 14, 2016, Mr. Lund published a blog post on Defendant Freedom
9 Foundation's website attacking Initiative 1. He wrote that "[f]irst, this policy is unfair and
10 immoral." He argued the measure would lead to certain citizens being "punished by having a
11 portion of their wealth confiscated and redistributed to others," and argued the initiative petition
12 was an "extreme idea of plundering the few for the benefit of some others." Other bolded
13 headings in his post argued that "[s]econd, it is not a function of city government to create
14 higher education programs," and "[t]hird, the initiative is unconstitutional."
15

16 3.16 Mr. Lund sent an e-mail from his Freedom Foundation e-mail account to Mark
17 Barber, the Olympia City Attorney, on July 14, 2016, which referred to a news report that the
18 City Council had "authorized the city manager to seek a judicial decision in Thurston County
19 Superior Court to determine whether the initiative is lawful." Mr. Lund asked if the City was
20 "going straight to court without a plaintiff Is this an attempt to get some kind of advisory
21 decision?" Mr. Lund continued, "I'm not an attorney, but in my experience the city could decline
22 to put something on the ballot and let the proponents bring an action. That would be the quickest,
23 most focused effort since it would be over in a matter of months and appeals could be unlikely."
24 He also offered to discuss over the telephone or by e-mail "what the city can do to get a ruling
25 on the legality of the initiative"
26

1 July 16, 2016 Freedom Foundation Podcast

2 3.17 Defendant Freedom Foundation staff recorded a podcast discussing the initiative
3 petition for approximately 26 minutes, which Defendant Freedom Foundation released for public
4 distribution on or around July 16, 2016. The podcast featured Freedom Foundation Managing
5 Editor Jeff Rhodes interviewing Senior Policy Analyst Jami Lund regarding the Olympia income
6 tax initiative petition. Rhodes observed, “we’ve talked about [the initiative petition] before, but
7 there have been some changes in the story, not the least of which is that Jami seems to have
8 inserted himself into it.” Lund stated of the initiative petition, “some activists from King County
9 have come in and said, ‘hey, we think it’d be a good idea if Olympia was sort of a guinea pig on
10 an income tax proposal,’” and added that the petition was “an out-of-Olympia effort to fund and
11 to manufacture this, you know, groundswell of support for an income tax,” and that the sponsors
12 were “a closet full of ideologues trying to, you know, rock the world with their proposal.” Lund
13 further noted the petition was “suspiciously” similar to a past statewide initiative concerning an
14 income tax, that the petition would establish a “horrible precedent,” and a “bad first domino to
15 start tipping.”
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18 3.18 Additionally, Defendant Freedom Foundation staff discussed Mr. Lund’s public
19 comment before the Olympia City Council on July 12, 2016, during which he opposed the
20 initiative petition on behalf of the Freedom Foundation. As Lund stated, “Freedom Foundation
21 really has a commitment to local engagement; you’re not going to get the change at the top level
22 if you can’t actually start helping people understand how government ought to work at that local
23 level, and that’s really where your impact is the greatest.” He paraphrased his recent testimony
24 to the City Council as “you’re basically saying, ‘city policemen, get your guns, go to some
25 people’s house, take money from them, and give it to these other people.’ And that’s what this
26

1 proposal does. And that is not a legitimate use of government force; that is something that is
2 really hard to justify that government should be doing at all, and that's really what's going on
3 here.”

4 3.19 Mr. Lund also described how he had stated in his public comment before the City
5 Council that the Freedom Foundation would likely sue the City if it enacted the proposed income
6 tax. He and Rhodes also discussed a potential pre-election legal challenge to the validity of the
7 petition, and the likely role of the Freedom Foundation in such a challenge. Lund summarized
8 the Freedom Foundation's position on the initiative petition: “We really do believe – we're
9 arguing on behalf of the principle of what's wrong with these policies. And so, we haven't said
10 what the city ought to do on its legal strategy, we're saying this policy is a horrible policy, it's
11 an unfair policy, it's an unworkable policy, and we plan to litigate – we'll look seriously at
12 litigating if you afflict people with this.”

13 3.20 On or around August 10, 2016, Defendant Freedom Foundation, through its paid
14 staff counsel, Greg Overstreet, filed an *amicus curiae* brief in the case *City of Olympia v.*
15 *Opportunity for Olympia, et al.*, No. 16-2-02998-34 (Thurston County Superior Court). The brief
16 argued that the initiative petition violated the uniform taxation provision in the Washington State
17 constitution.

18 3.21 On August 24, 2016, the superior court invalidated Initiative 1, and enjoined it
19 from appearing on the general election ballot in November 2016. The Court's ruling was stayed
20 by the Court of Appeals on September 2, 2016, and Initiative 1 appeared on the November 4,
21 2016 General Election ballot.

22 3.22 Initiative 1 failed with 13,640 (52.22%) opposed and 12,480 (47.78%) in favor.
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1 3.23 In records currently on file with the Public Disclosure Commission, Opportunity
2 for Olympia, the only registered political committee that campaigned on behalf of Initiative 1,
3 raised a total of \$260,365.64 and spent all of the funds it raised on the campaign. The only
4 registered political committee opposed to Initiative 1, Olympians for Responsible Tax Reform,
5 raised \$6,741.03 and spent \$5,230.66.
6

7 3.24 Olympians for Responsible Tax Reform reported receiving no in-kind
8 contributions from Defendant Freedom Foundation in the committee's campaign in opposition
9 to Initiative 1.

10 3.25 All work in opposition of Initiative 1 described above and performed by
11 Defendant Freedom Foundation staff was paid for by Defendant Freedom Foundation.
12

13 *The Freedom Foundation's Fails to File Reports of Independent Expenditures Related
14 to Its Campaign Against Initiative 1*

15 3.26 To date, Defendant Freedom Foundation has failed to file any independent
16 expenditure report (C-6) with the Public Disclosure Commission to disclose its independent
17 expenditures in opposition to local state ballot proposition Initiative 1.

18 3.27 On information and belief, Defendant Freedom Foundation's payments for staff
19 time, web hosting fees, podcast recording, and other expenses for the effort to oppose Initiative 1
20 exceeded the reporting threshold for filing C-6 reports during the 2016 campaign against
21 Initiative 1, and as a result, the Freedom Foundation was obligated to file such reports with the
22 State Public Disclosure Commission.
23

24 **V. CLAIMS**

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

