

FILED

JAN - 3 2020

Superior Court
Linda Myhre Enlow
Thurston County Clerk

1 Hearing date: Friday, January 3, 2020
2 Hearing time: 9:00 a.m.
3 Judge/Calendar: Hon. John C. Skinder
4
5
6

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 JERRY MOBERG, *et al.*,

13 Defendants.

NO. 17-2-02517-34

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF STATE OF
WASHINGTON'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
AGAINST DEFENDANTS JERRY
MOBERG AND KEN GREENE

14 THIS MATTER came on for hearing before the Court on Friday, January 3, 2020, on
15 Plaintiff State of Washington's Motion for Partial Summary Judgment Against Defendants Jerry
16 Moberg and Ken Greene. The parties appeared through counsel. The Court heard oral argument
17 from the parties and considered the following records and pleadings on file:

- 18
- 19 a. Plaintiff State of Washington's (State) Motion for Partial Summary Judgment
20 Against Defendants Jerry Moberg and Ken Greene;
 - 21 b. First Declaration of S. Todd Sipe, with Exhibits;
 - 22 c. First Declaration of Tony Perkins, with Exhibits;
 - 23 d. First Declaration of Philip Stutzman, with Exhibits;
 - 24 e. Defendant Jerry Moberg's Opposition to State's Motion for Partial Summary
25 Judgment;
 - 26 f. Declaration of Lori W. Hurl, with Exhibits;

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF STATE OF WASHINGTON'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST DEFENDANTS
JERRY MOBERG AND KEN GREENE

1

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia, WA 98504-0111
(360) 709-6470

- 1 g. Defendant Ken Greene’s Joinder in Co-Defendant Jerry Moberg’s Opposition to
2 State’s Motion for Summary Judgment and Further Opposition to State’s Motion
3 for Summary Judgment;
4 h. State’s Consolidated Reply in Support of Its Motion for Partial Summary Judgment
5 Against Defendants Jerry Moberg and Ken Greene; and
6 i. Second Declaration of S. Todd Sipe, with Exhibits.

6 The Court hereby makes the following findings of fact and conclusions of law:

7 **I. FINDINGS OF FACT**

8 1. In 2014, Garth Dano (Dano) ran against incumbent Angus Lee (Lee) for Grant
9 County prosecutor. Defendants supported Lee and opposed Dano in that election.

10 2. Defendant Ken Greene (Greene) researched Dano and then designed a mailer
11 (Dano Mailer) with his own computer that contained negative information about Dano and urged
12 Grant County voters to vote for Lee instead, describing Lee as a “proven leader.”

13 3 The Dano Mailer did not disclose that Greene had created it. Instead, the Dano
14 Mailer identified a fictitious entity – Grant County Concerned Voters – as its source.

15 4. Greene invented the name “Grant County Concerned Voters.” No group with a
16 name identical or similar to “Grant County Concerned Voters,” was registered with the Public
17 Disclosure Commision (PDC). Greene chose to represent the sponsor of the Dano Mailer as
18 “Grant County Concerned Voters” because he wanted to avoid identifying himself with the
19 message in the mailer.
20

21 5. Sometime after the August 5, 2014 primary election, Greene met with Defendant
22 Jerry Moberg (Moberg) at his law office to discuss legal issues about the Dano Mailer Greene
23 was developing.
24

25 6. Moberg later agreed to assist Greene to find a printing business for the Dano
26

1 Mailer.

2 7. Greene purposefully sought a printer located outside the Grant County area.

3 8. Moberg researched on-line and provided information to Greene on multiple
4 potential printers for the mailer. Greene chose the Borns Group, a printer located in South
5 Dakota, from the information provided by Moberg.
6

7 9. Both Greene and Moberg communicated with the selected printing company, the
8 Borns Group.

9 10. Greene made initial contact with the Borns Group and transmitted a draft of the
10 mailer he prepared.

11 11. By late September 2014, Moberg was also communicating with the Borns Group
12 about the Dano Mailer by both telephone and email.

13 12. During one telephone conversation with the Borns Group, Moberg discussed the
14 contents of the Dano Mailer and told them that he thought it was appropriate to send out.
15

16 13. In an email Moberg sent to the Borns Group on September 29, 2014 at 2:54 p.m.,
17 Moberg provided them with a mailing list for the Dano Mailer.

18 14. In an email sent on September 29, 2014 at 4:45 p.m., the Borns Group staff asked
19 Greene to review proofs of the Dano Mailer and to notify them if they needed to make any
20 changes.
21

22 15. The following day, September 30, 2014 at 12:30 p.m., Moberg sent an email to
23 the Borns Group that included a revised mailing list. Moberg represented that Greene had “pared
24 down” the list to 12,000 voters, and instructed the Borns Group to build its price quote from that
25 list.
26

1 16. Just over an hour later, Moberg sent another email to the Borns Group approving
2 the Borns Group's quote for \$3,872.10 (with a few corrections) for 12,000 copies of the Dano
3 Mailer to be printed and mailed, but instructed the Borns Group to send their invoice to Greene
4 instead.

5
6 17. In the same email, Moberg assured the Borns Group that Greene would forward
7 them a signed check in the amount quoted, and that the funds needed for that check would be
8 available in Greene's account by noon the following day, October 1, 2014.

9 18. Specifically, Moberg wrote to the Borns Group, "If you can correct the order and
10 resend it to Ken [Greene] to sign it. He will forward you a signed check for the amount due.
11 Those funds will be available for withdrawal tomorrow by noon Pacific Standard Time."

12 19. In accordance with Moberg's instruction, the Borns Group emailed the invoice to
13 Greene the following day, October 1, 2014, at 10:11 a.m.

14 20. At the time Moberg agreed to the Borns Group's quote and assured them that the
15 money needed to pay their \$3,872.10 invoice would be available in Greene's account the
16 following day, Greene's account balance was only \$91.37.

17 21. Greene had already informed Moberg that he did not have sufficient funds in his
18 account to pay the Borns Group and asked Moberg to provide him with the cash needed to pay
19 them.
20

21 22. Greene told Moberg that the funds he provided would be used to pay for the Dano
22 Mailer and that Greene would not otherwise be able to pay the Borns Group to print and mail
23 the Dano Mailer.
24

25 23. On October 1, 2014, Moberg wrote a \$4,000 check to himself from his law firm's
26

1 account and then cashed that check, and provided the cash to Greene.

2 24. In turn, Greene deposited the \$4,000 in cash to his account the same day,
3 October 1, 2014.

4 25. Moberg provided the payment to Greene in cash so those funds would be
5 immediately available in Greene's account to cover payment to the Borns Group.
6

7 26. At 11:50 a.m., that same day, Moberg, not Greene, sent an email to the Borns
8 Group transmitting a scanned copy of a check from Greene authorizing the payment for printing
9 and mailing the Dano Mailer from Greene's account.

10 27. The \$3,872.10 payment to the Borns Group cleared Greene's account two days
11 later on October 3, 2014.

12 28. On or about October 11, 2014, thousands of Grant County voters received the
13 Dano Mailer in the mail, three weeks before the election.

14 29. In addition to providing negative information about Dano, the final version of the
15 Dano Mailer received by voters still identified a fictitious entity – Grant County Concerned
16 Voters – as its source, rather than Greene and Moberg.
17

18 30. Greene and Moberg did not register as a political committee and failed to file any
19 reports with the PDC disclosing the source of funds used to pay for the Dano Mailer.
20

21 31. Within a week of the date the Dano Mailer was distributed, Greene was asked
22 directly about the Dano Mailer online and failed to identify either himself or Moberg as the
23 sponsors of the Dano Mailer.

24 32. After receiving multiple complaints about the Dano Mailer in October 2014, the
25 PDC launched an investigation to identify the sponsors behind the mailer.
26

1 33. On October 24, 2014, the PDC contacted the Borns Group, which in turn notified
2 Moberg and Green about the investigation the next business day.

3 34. Following the issuance of an administrative subpoena, the Borns Group
4 eventually disclosed Greene's and Moberg's identities to the PDC.

5 35. Nearly a year after first contacting the Borns Group, the PDC contacted Greene
6 on September 21, 2015 to directly notify him that they were conducting a formal investigation
7 into the Dano Mailer.

8 36. The PDC requested that Greene identify all persons and vendors who were
9 involved in organizing, funding, producing, or disseminating the mailing.

10 37. Despite the request, Greene initially refused to disclose his or Moberg's
11 involvement with the Dano Mailer.

12 38. Instead, Greene demanded an explanation of how the PDC staff came to associate
13 him with the Dano Mailer.

14 39. Greene and Moberg later responded in writing to the PDC complaint through their
15 attorney on January 22, 2016.

16 40. Significantly, their January 22, 2016 letter to the PDC omitted Moberg's role in
17 providing the funds needed for the Dano Mailer and instead represented that "Ken Greene was
18 the sole decision-maker and financial contributor."
19

20 41. As part of the PDC's investigation, Greene and Moberg were interviewed under
21 oath by the PDC's Director of Compliance on July 15, 2016.
22
23
24
25
26

1 4. Defendants violated RCW 42.17A.235 and RCW 42.17A.240 by failing to file
2 required “C-3 Monetary Contributions” and “C-4 Campaign Summary, Receipts &
3 Expenditures” reports for their committee. Defendants were required to file a C-3 report and a
4 C-4 report on October 14, 2014 (the date the registration statement was due) and two additional
5 C-4 reports on October 28, 2014 (7 days before the election) and December 10, 2014 (the 10th
6 day of the month following the election). As of January 3, 2020, these reports are a combined
7 7,557 days late.
8

9 5. The Dano Mailer was an “electioneering communication” because it was sent by
10 U.S. postal service mail to Grant County voters within 60 days before the election for county
11 prosecutor, identified the candidates, and had a value of \$1,000 or more. Accordingly,
12 Defendants violated RCW 42.17A.305 by failing to file a special C-6 Electioneering
13 Communications report. The C-6 report was due October 14, 2014, the next business after the
14 Dano Mailer was presented to the public. As of January 3, 2020, Defendants’ C-6 Report is 1,907
15 days late.
16

17 6. Defendant Greene committed two separate violations of RCW 42.17A.435 by
18 engaging in conduct that effected concealment of both Moberg’s \$4,000 contribution and their
19 committee’s \$3,872.10 expenditure to Borns Group for the Dano Mailer from the public.
20

21 7. Defendant Greene violated RCW 42.17A.320 by identifying a fictitious entity,
22 and assumed name for himself, as the sponsor for the Dano Mailer.

23 8. Defendant Moberg violated RCW 42.17A.435 by engaging in conduct during the
24 PDC’s investigation that effected concealment of his \$4,000 contribution and therefore his role
25 as the source of payment for the Dano Mailer from the PDC and the public.
26

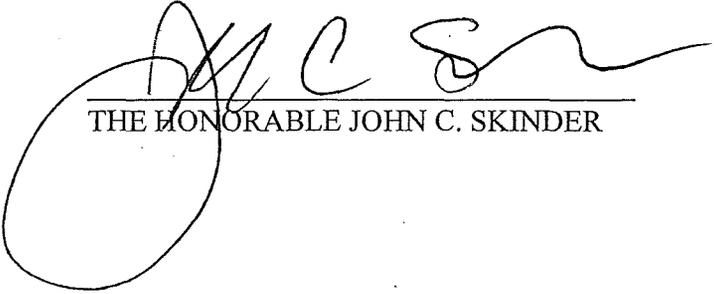
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. ORDER

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

1 The State's Motion for Partial Summary Judgment is GRANTED, and
2 Defendants Jerry Moberg and Ken Greene are determined to have committed multiple violations
3 of state campaign finance laws as identified herein.

DATED this 3rd day of January 2020.


THE HONORABLE JOHN C. SKINDER

PRESENTED BY:

ROBERT W. FERGUSON
Attorney General

s/ S. Todd Sipe

S. TODD SIPE, WSBA #23203
MARTHA RODRÍGUEZ LÓPEZ, WSBA #35466
Assistant Attorneys General
Attorneys for Plaintiff State of Washington