NO. 95281-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EVERGREEN FREEDOM FOUNDATION
d/b/a FREEDOM FOUNDATION,

Petitioner.

STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

REBECCA GLASGOW, WSBA 32886
Deputy Solicitor General

LINDA A. DALTON, WSBA 15467
Senior Assistant Attorney General

CHAD C. STANDIFER, WSBA 29724
Assistant Attorney General

Office ID 91087
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
360-753-6200

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

I. INTRODUCTION

The Court of Appeals correctly decided this case by interpreting the Fair Campaign Practices Act to require public access to information about all independent expenditures made to promote or oppose local ballot propositions. The Evergreen Freedom Foundation advocates for a loophole in the law that would allow interest groups to hide from public view their independent expenditures made at the early stages, including expenditures on litigation about whether a proposition is presented to voters. The Freedom Foundation's reading of the statute would undermine transparency at the local level. It would prevent easy access to a proposition's most devoted supporters and opponents even though local initiatives often serve as precursors to, and build momentum for, statewide initiative campaigns.

The Court of Appeals analysis is consistent with the text, purpose, and the required liberal construction of the Fair Campaign Practices Act. The Court of Appeals decision is also consistent with well-established First Amendment case law distinguishing reporting requirements from outright restrictions on speech.

This case does not present a significant constitutional question because the constitutional issues are resolved by well-settled case law. The State acknowledges, however, that this case presents an issue of significant public importance. This case is a good vehicle for addressing the correct interpretation of the Fair Campaign Practices Act and this Court should provide definitive guidance to sponsors and opponents of local initiatives

who often use litigation to determine whether a local ballot proposition will be presented to voters.

The Court of Appeals opinion is thorough and well-reasoned. This Court should affirm, concluding that the Fair Campaign Practices Act requires reporting of *any* independent expenditures supporting or opposing a local ballot proposition, including expenditures made during signature gathering and any expenditures on litigation to determine whether the proposition is presented to voters.

II. STATEMENT OF THE CASE

In 1972, Washington voters adopted Initiative 276, designed, in part, to give the public complete access to information about who funds election campaigns, including initiative campaigns, and who seeks to influence the outcome of a ballot proposition. I-276 § 1. RCW 42.17A requires "any . . . organization or group of persons, however organized" to timely file reports of "independent expenditures." RCW 42.17A.005(35), .255. "Independent expenditure," for purposes of RCW 42.17A.255, includes "any expenditure that is made in support of or in opposition to any . . . ballot proposition and is not otherwise required to be reported . . . ." RCW 42.17A.255(1). The Legislature has defined "ballot proposition" as

> any "measure" as defined by RCW 29A.04.091, *or* any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

RCW 42.17A.005(4) (emphasis added).

The process for proposing an initiative, recall, or referendum differs at the state and local levels. A sponsor of a statewide initiative must file the text of the proposed initiative, and the Attorney General creates a ballot title, which is then printed on the petitions for gathering voter signatures. *See* RCW 29A.72.010-.120; *see also* Laws of 1913, Reg. Sess., ch. 138, §§ 1-6. In contrast, most local initiative petitions are first filed with the local election officer after signatures have already been gathered. *See* RCW 35.17.260. If the petition contains the required number of valid signatures, the local government's council or commission must either pass the proposed ordinance or submit it to a vote of the people. RCW 35.17.260.[1]

The Freedom Foundation created sample ballot propositions for citizens to propose at the local level. CP at 6-7, 15. Local residents in the cities of Sequim, Chelan, and Shelton used those samples to file two ballot propositions in each city, one to require collective bargaining negotiation sessions to be publicly conducted, and the second to prohibit union security clauses in city collective bargaining agreements. CP at 7-8, 15.

Each proponent submitted the proposed measures to the local city clerk along with signatures they had gathered in support of the propositions. CP at 7-8, 75, 81, 86-87. They asked their respective city councils or

[1] *See also* RCW 35.17.240-.360; RCW 35A.11.100; Sequim City Code 1.15 (adopting the initiative power and process set forth in RCW 35A.11.080-.100); Shelton City Code § 1.24.010 (adopting all rights, powers, and duties under RCW Title 35A, including RCW 35A.11); Chelan Municipal Code §§ 2.48.060, .070, .080, .090.

commissions to either pass the propositions as local ordinances or alternatively place each proposition on the local ballot for a vote. CP at 7-9, 21, 24. The cities of Chelan and Shelton voted unanimously to neither adopt the propositions nor place them on the ballot. CP at 8-9, 16-17, 21-22, 35, 81, 86-87. The City of Sequim concluded that it would table the issue until a later meeting, but never acted further. CP at 75.

In response, the Freedom Foundation's attorneys brought lawsuits against each jurisdiction on behalf of the local resident proponents. CP at 7-9, 16, 20, 73-87. Each suit sought a court order directing that each local initiative be placed on the local ballot. CP at 72-87. In each case, the superior court dismissed because the subject matter was beyond the local initiative power or it conflicted with state law. *See* CP at 21-22; VRP at 4; RCW 41.56 (collective bargaining); RCW 35A.11.020 (granting the local legislative body certain exclusive powers related to employees); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261-62, 138 P.3d 943 (2006).

The Freedom Foundation never filed any campaign finance disclosure reports publicly identifying the value of the legal services it provided in support of getting these local ballot propositions on the ballot. CP at 9-10. The Attorney General received a complaint on behalf of a "Committee for Transparency in Elections," alleging that the Freedom Foundation had violated RCW 42.17A in various ways. CP at 64. The letter served as a 45-day notice of intent to bring a citizen's action should the State fail to commence an action. CP at 64; RCW 42.17A.765(4). In part based on a need to prioritize because of limited resources, the State has not

typically investigated or brought actions under RCW 42.17A absent a complaint. *See* CP at 61-62. To date, the State has received no additional complaints related to the 2014 local initiatives or activities supporting or opposing these initiatives.[2]

The State filed an enforcement action in superior court against the Freedom Foundation and the Freedom Foundation moved to dismiss. CP at 5-10, 19-33. The Freedom Foundation argued that because the local initiative process generally requires signatures to be gathered and submitted before the ballot propositions are filed with the local elections official, the local propositions could not be "ballot propositions" under RCW 42.17A.005, and therefore no disclosure was required unless and until the proposition became a "measure" placed on a ballot. CP at 19-33. The superior court agreed and dismissed. CP at 102-03. The State timely sought direct review at this Court. CP at 104-05.

This Court transferred the case to the Court of Appeals. The Court of Appeals reversed, holding in a partially published opinion that "under the only reasonable interpretation of the definition of 'ballot proposition,' " the Sequim, Chelan, and Shelton initiatives qualified as ballot propositions at the time the Freedom Foundation provided legal services because the initiatives had been filed with local election officials. *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 292, 404 P.3d 618, 625 (2017)

[2] While the Freedom Foundation has brought complaints under RCW 42.17A in other circumstances, it has chosen not to do so here, perhaps because it does not believe that the pro bono services at issue are subject to disclosure requirements. Still, under RCW 42.17A.770, the five-year statute of limitations for bringing enforcement actions would not expire until 2019.

(published in part). The Court of Appeals also rejected the Freedom Foundation's argument that reporting requirements could only apply to electioneering that occurs once a proposition had been placed on the ballot. *Evergreen Freedom Found.*, 404 P.3d at 626. Moreover, RCW 42.17A.255 does not violate the Freedom Foundation's First Amendment rights. *Evergreen Freedom Found.*, 404 P.3d at 626. In the unpublished portion of the opinion, the Court of Appeals rejected the Freedom Foundation's other arguments, including that the statute is unconstitutionally vague. *State v. Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 23, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. The Freedom Foundation now seeks review.

III. STATEMENT OF THE ISSUES

If this Court were to grant review, the issues would be:

1. Do RCW 42.17A.255 and RCW 42.17A.005(4) exclude from campaign finance reporting any money spent to support or oppose a local ballot proposition through litigation or until it is placed on the ballot, even though the people and the Legislature intended comprehensive public disclosure of independent expenditures made to support or oppose local ballot propositions?

2. Given that courts have recognized a compelling public interest in transparency about who expends resources to support or oppose a ballot proposition, as well as the minimal burden created by disclosure requirements, does the State's enforcement action violate the Freedom Foundation's First Amendment right of free speech or is the statutory scheme so vague as to be unconstitutional?

IV. ARGUMENT

The State agrees that the interpretation of the Fair Campaign Practices Act is an issue of broad public import warranting this Court's

attention and this Court should offer definitive guidance to sponsors and opponents of local initiatives. This Court should affirm the Court of Appeals analysis. The only reasonable interpretation of RCW 42.17A.005(4) and .255 is that *all* independent expenditures supporting or opposing local ballot propositions must be reported, and local initiatives become "ballot propositions" at the very least when they are filed. Adopting the Freedom Foundation's interpretation would create a loophole in the law eliminating transparency before a local ballot proposition is placed on the ballot, contrary to the people's and Legislature's intent. Even so, this case does not present a significant constitutional question. The Fair Campaign Practices Act is not void for vagueness and the Freedom Foundation misapplies the constitutional case law regarding disclosure requirements.

A. The Court of Appeals Correctly Concluded That the Fair Campaign Practices Act Requires Reporting of Independent Expenditures Supporting a Ballot Proposition, Beginning At Least When the Proposition is Filed with Local Officials

Where a court is charged with determining the meaning of a statute, its fundamental objective is to carry out the people's and the Legislature's intent, looking to the entire context of the statutory scheme, as well as the "general object to be accomplished and consequences that would result from" the parties' constructions. *E.g.*, *BAC Home Loans Servicing v. Fulbright*, 180 Wn.2d 754, 766, 328 P.3d 895 (2014) (internal quotation marks omitted). Here, the text, context, and history of RCW 42.17A show that the people and the Legislature intended reporting at the earliest stages of a local initiative campaign.

RCW 42.17A requires any "public or private corporation . . . or any other organization or group of persons, however organized" to timely file reports of "independent expenditures." RCW 42.17A.005(35), .255. "Independent expenditure," for purposes of RCW 42.17A.255, includes "*any* expenditure that is *made in support of or in opposition to any . . . ballot proposition* and is not otherwise required to be reported . . . ." RCW 42.17A.255(1) (emphasis added). Disclosure is triggered when expenditures amount to more than $100. RCW 42.17A.255(2). Required disclosures include an initial report, followed by periodic updates if expenditures continue, as well as three required updates at specific stages of the election season. RCW 42.17A.255(2), (3), (5); *see also Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 998-99 (9th Cir. 2010). Organizations like the Freedom Foundation must file timely reports of the value of their expenditures supporting any "ballot proposition."

1. The Court of Appeals correctly rejected the argument that a "campaign" encompasses only "electioneering"

The Freedom Foundation contends that the independent expenditure reporting obligation arises only "during an election campaign" under RCW 42.17A.255(2), and the concept of an "election campaign" is limited to "electioneering" activities, not litigation. The Court of Appeals correctly rejected this argument.

The people and the Legislature said that *any* expenditure must be reported, not just expenditures related to electioneering or communications with voters once a proposition has been placed on the

ballot. RCW 42.17A.255(1) ("'[I]ndependent expenditure' means *any expenditure* that is made *in support of* or in opposition to *any* candidate or *ballot proposition* and is not otherwise required to be reported . . . ." (Emphases added.)). Where the Legislature intended to limit disclosure to "electioneering" or "advertising," within RCW 42.17A, it used those more limited words, which are specifically defined in the Act. RCW 42.17A.005(19) (defining "electioneering" to mean a broadcast, transmission, mailing, billboard, newspaper, or periodical about a candidate), (36) (defining "political advertising" to mean any mass communication for the purpose of appealing for votes or for other support or opposition). Neither the term "electioneering" nor "political advertising" appears in RCW 42.17A.255.

Moreover, there is a separate reporting requirement for expenditures for electioneering communications. *E.g.*, RCW 42.17A.005(19), .305, .335. The law also separately sets out required reporting for "political advertising," including mail and voice communications with voters in the form of brochures and letters. RCW 42.17A.260, .005(36). Had the people and the Legislature intended what the Freedom Foundation claims, (1) they would not have needed to include the independent expenditure requirement at all because reporting for electioneering communications and political advertising are already covered in other provisions of the Act, or (2) they would have used the terms "electioneering" and/or "political advertising" in RCW 42.17A.255(1).

While the Freedom Foundation relies on the term "election

campaign" in RCW 42.17A.255(2) to support its theory, that term is defined in RCW 42.17A.005(17) to include "any campaign in support of, or in opposition to, a ballot proposition." The Freedom Foundation's legal services were rendered "in support of" local initiatives—they litigated to force the initiatives onto the ballot. If the people and the Legislature intended "campaign" to encompass only convincing voters to vote for or against a proposition, they would not have expressly incorporated initiatives that are "proposed to be submitted to the voters" within the coverage of "ballot proposition." RCW 42.17A.005(4). This portion of the definition of "ballot proposition" would be rendered meaningless if the Act applied only to electioneering communications about an initiative that is on the ballot. The Freedom Foundation's insistence that a "campaign" only encompasses communications with voters once a proposition is on the ballot ignores the plain language of RCW 42.17A.005(4) and .255.

The Freedom Foundation also suggests that litigation services cannot be independent expenditures in support of a ballot proposition. Pet. for Review at 10-11. But litigation is now a tactic in ballot proposition campaigns. A legal challenge is an arrow in the quiver of opponents seeking to defeat a ballot proposition, whether successful or not, and litigation is now a common means of blocking adoption of an initiative or forcing an initiative onto the ballot. *E.g.*, *Huff v. Wyman*, 184 Wn.2d 643, 361 P.3d 727 (2015) (litigation brought by two county election officials and opponents over whether a statewide initiative could be placed on the ballot); *Filo Foods, LLC v. City of SeaTac*, 179 Wn. App. 401, 319 P.3d 817 (2014)

(litigation over whether a local minimum wage initiative received enough valid signatures to qualify for the ballot).

In 2017 alone, there were two significant pieces of litigation about local initiatives—a Spokane initiative regarding sanctuary status/immigration and a Seattle initiative regarding safe injection sites. The incontestable purpose of such litigation efforts was to support or oppose the ballot propositions by forcing them onto or blocking them from the ballot. To read the statute as the Freedom Foundation suggests would undermine the plain purpose of campaign finance law, which is to give the public access to information about who is bankrolling efforts to support or defeat initiatives. RCW 42.17A.001.

The Freedom Foundation relies on four words in *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d 990, 998 (9th Cir. 2010), "in a given election," to establish that RCW 42.17A.255's reporting requirements apply only to electioneering. Pet. for Review at 11. But the Ninth Circuit did not directly address in *Human Life of Washington, Inc.* whether litigation expenses are independent expenditures that support or oppose a ballot proposition. The issue presented in that case was framed in terms of communications with voters and nothing in the opinion suggests that the Ninth Circuit intended to excuse the reporting of independent expenditures for anything else. Instead, the Court of Appeals reasoning in this case is consistent with the Fair Campaign Practices Act's plain language, purpose,

and context.[3]

2. The Court of Appeals also correctly applied the definition of "ballot proposition"

The Freedom Foundation also asserts that a local initiative can never become a "ballot proposition" until it is placed on the ballot, but the Court of Appeals correctly rejected this argument as well. The Legislature defined "ballot proposition" broadly to include, at the very least, a local initiative that has been initially filed with local officials, and arguably when signature gathering has begun. RCW 42.17A.005(4).

The definition has two prongs. The first incorporates "any proposition or question submitted to the voters." RCW 29A.04.091 (defining "measure"). The second prong incorporates additional propositions: those "proposed to be submitted to the voters," including voters of "any municipal corporation, political subdivision, or other voting constituency" "from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures." RCW 42.17A.005(4). As the Court of Appeals concluded, at the very least under the plain language of the second prong, a local initiative becomes a "ballot proposition" once it is initially filed with local officials. RCW 42.17A.005(4) ("from and after the time when the proposition has been initially filed with the appropriate election

[3] The Freedom Foundation also refers to cases involving contribution limits as applied to pro bono services. Pet. for Review at 12-13, 19; *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012). But the law applicable to contribution limits is different. Limits create a cap on available funds for expenditures. Here, there is no cap that would limit the extent of legal services that can be provided without charge—there is only a reporting requirement.

officer of that constituency").

Here, the local initiatives were filed with county auditors and clerks for signature checking, and then the local legislative bodies declined to put the initiatives on the ballot. CP at 74-75, 79-81, 85-86. Thus, the Freedom Foundation provided pro bono legal services after the local initiatives were "initially filed" with local officials for processing. RCW 42.17A.005(4). While the Freedom Foundation insists that because signatures were already gathered, the second prong of the definition cannot apply in these circumstances, or in any circumstances where a local initiative is filed after signature gathering, that ignores the second prong's express application to local initiatives. The Court of Appeals was correct.

While the Court of Appeals declined to further address the issue, if this Court were to accept review, it should alternatively recognize that the second prong's plain language contemplates both that it applies to local initiatives once filed *and* that local initiatives become "ballot propositions" "before [the initiative's] circulation for signatures." RCW 42.17A.005(4). The language about initially filing with officials would not be surplusage because it would continue to apply in the context of statewide initiatives. Even so, this Court has recognized that it can ignore surplusage in some contexts. *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 859, 774 P.2d 1199 (1989). And this Court has explained that "surplusage in a statute may be ignored in order to subserve legislative intent." *Id.* (citing 2A Norman Singer, *Statutory Construction* § 47.37 (4th ed. 1984)).

It is the most consistent with the people's statement of intent and the

legislative history to apply disclosure requirements to independent expenditures related to signature gathering for local initiatives. First, the people provided that the campaign disclosure statutes "shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns [including support of or opposition to a ballot proposition] . . . so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." RCW 42.17A.001, .005(17). This liberal construction rule, along with the statement of the people's purpose to require full disclosure to promote public confidence, is included in the plain reading of the statute. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010); RCW 42.17A.001.

Second, the legislative history, in particular a 1975 amendment, indicates the Legislature clarified the language of the definition of "ballot proposition" in order to solve a problem. H.B. Analysis of Substitute H.B. 827, at 1, 44th Leg., 1st Ex. Sess. (Wash. Mar. 24, 1975). The prior language was potentially unclear as to when a *proposed* initiative triggered reporting requirements. *Id.* The bill analysis for the amendment confirms the Legislature's intent to cover proposed local initiatives, at the very least after the filing with local officials, but also "prior to circulation for signatures on petitions to place such measures on the ballot." *Id.* "[S]uch measures" included "measures which are proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or any other voting constituency." H.B. Analysis of Substitute H.B. 827, at 1, 44th Leg., 1st Ex.

Sess. (Wash. Mar. 24, 1975). Interpreting the definition of "ballot proposition" to exclude disclosure of expenditures incurred during signature gathering would be contrary to this plain intent.

In sum, the Court of Appeals correctly concluded that the local initiatives at issue here became "ballot propositions" when they were filed with local officials, before the Freedom Foundation expended its attorney resources to support the propositions by litigating to get them on the ballot. But under the definition of "ballot proposition," reporting is triggered even earlier, "before its circulation for signatures." RCW 42.17A.005(4). This is especially important given that cities have become proving grounds for ballot propositions in Washington, as initiatives on topics from the minimum wage to campaign finance reform have been presented to local voters before they take the statewide stage. Understanding who supports a local ballot proposition at its earliest stages provides the public with insight into which interests most strongly support a measure. To read the statute as the Freedom Foundation suggests would undermine the plain purpose of the statute—to give the public access to information about who is bankrolling efforts to get an initiative on the ballot or keep it off. RCW 42.17A.001.

These statutory interpretation issues are ones of substantial public interest. While the Court of Appeals decided them correctly in a well-reasoned decision, this Court should take the opportunity to clarify that the reporting obligation arises before filing for local initiatives, "before . . . circulation for signatures." This would ensure compliance with the people's and the Legislature's intent to require reporting at all stages.

B. This Case Raises No Significant Constitutional Question Because the Fair Campaign Practices Act Is Not Vague

The Freedom Foundation's vagueness argument does not raise a significant constitutional question because resolution involves a straightforward application of vagueness standards.

A party asserting that a statute is void for vagueness must prove unconstitutionality beyond a reasonable doubt. *Voters Educ. Comm. v. Wash. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007). As the Court of Appeals explained, a statute is not void for vagueness "'simply because it could have been drafted with greater precision.'" *State v. Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 23, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. (quoting *Am. Legion Post 149 v. Dep't of Health*, 164 Wn.2d 570, 613, 192 P.3d 306 (2008)). A statute is sufficiently clear when it provides explicit standards and a person of ordinary intelligence can have a reasonable opportunity to know what is required to be prohibited. *Id.*

Here, the Freedom Foundation argues that the definition of "ballot proposition" cannot apply to local initiatives and the obligation to report independent expenditures cannot apply to activities beyond electioneering. Both of those assertions are belied by the plain statutory language. As explained above, a local initiative becomes a ballot proposition, at the very least, when it is filed with local elections officials, and it is clear that all of the initiatives in question were filed before the Freedom Foundation

expended resources to support them. RCW 42.17A.005(4); CP at 7-9, 16, 20, 73-87. And *any* independent expenditures in support of a ballot proposition plainly must be reported under RCW 42.17A.255. The statutory language is not unconstitutionally vague either facially or as applied in these circumstances. The Freedom Foundation's vagueness argument does not present a significant constitutional issue.

C. This Case Raises No Significant Constitutional Question Because Courts Have Routinely Held That Disclosure Requirements Do Not Infringe on First Amendment Rights

The Freedom Foundation's First Amendment argument involves a similarly straightforward application of existing First Amendment case law. This Court has recognized that full and vigorous discussion of political issues is a cornerstone of our democracy. *Voters Educ. Comm.*, 161 Wn.2d at 479. But for purposes of a First Amendment analysis, the U.S. Supreme Court, the Ninth Circuit, and this Court have distinguished between contribution limits, which necessarily reduce the quantity of important political expression, and disclosure or reporting requirements, which "'impose no ceiling on campaign-related activities,'" and instead increase information available to the electorate. *Human Life of Wash., Inc.*, 624 F.3d at 1003 (quoting *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)); *see also Voters Educ. Comm.*, 161 Wn.2d at 482. Thus, cases addressing contribution limits or bans on certain speech or activities are inapposite.[4]

[4] *See NAACP v. Button*, 371 U.S. 415, 419-20, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963) (analyzing ban on "improper solicitation of any legal or professional business" as applied to NAACP); *City of Chicago v. Morales*, 527 U.S. 41, 45, 59-64, 119 S. Ct. 1849,

A campaign finance law's disclosure requirements are reviewed under "exacting scrutiny," rather than strict scrutiny. *See, e.g.*, *Human Life of Wash., Inc.*, 624 F.3d at 1005 (describing *Doe v.Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d. 493 (2010)); *Voters Educ. Comm.*, 161 Wn.2d at 482. There must only be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Reed*, 561 U.S. at 196 (internal quotation marks omitted).

There is a substantial relationship between the government's interest in transparency and the information to be disclosed. *Human Life of Wash., Inc.*, 624 F.3d at 1003. Campaign disclosure requirements provide the electorate with critical information about the supporters and opponents of issues before them, an "extremely compelling" interest. *Id.* at 1005-07. The informational interest is especially important in the initiative context where "following the money" allows voters to determine whether an interest group's involvement signals alignment with the voters' interest. *Id.* Because our disclosure requirement is not a ban, cap, or limitation on speech, it is "the least restrictive means" of "curbing the evils of campaign ignorance and corruption." *Id.* at 1003; *Voters Educ. Comm.*, 161 Wn.2d at 482-83.

Applying campaign disclosure requirements will not chill free legal representation in support of or opposition to local initiatives or risk violating

---

144 L. Ed. 2d 67 (1999) (analyzing ordinance prohibiting loitering in any public place); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 320-21, 366-67, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (invalidating prohibition on corporation and union contributions to or express advocacy for or against a candidate in certain federal elections, but distinguishing disclaimer and disclosure requirements); *Ariz. Free Enter. v. Bennett*, 564 U.S. 721, 729-30, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011) (analyzing a matching public funds system, not a disclosure requirement).

the attorney-client privilege. Both this Court and the Ninth Circuit have explained that generally, the identity of the client, the amount of a bill or fee, and the general purpose of the work performed are not protected from disclosure by the attorney-client privilege. *E.g.*, *Dietz v. Doe*, 131 Wn.2d 835, 846, 935 P.2d 611 (1997) ("Ordinarily, the name of a client is not a confidential communication under the protection of the attorney-client privilege."); *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129-30 (9th Cir. 1992) (bills that contained identity of client, case name, amount of fee, and general nature of services performed, but not litigation strategy or specific legal research, were not privileged). The Freedom Foundation has offered no facts to suggest disclosure of the value of legal services that occurred in the context of public litigation—without more—would somehow reveal client confidences.

Relying on *Citizens United*, the Freedom Foundation also claims that disclosure requirements can constitutionally apply only to electioneering communications, not pro bono activities or other expenditures. Pet. for Review at 19. But the *Citizens United* decision held the opposite: "we *reject* Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 369, 130 S. Ct. 876, 175 L. Ed. 2d 753, (2010) (emphasis added); RCW 42.17A.005(19)(a) (defining electioneering). Disclosure requirements are not constitutionally limited to electioneering. *Citizens United*, 558 U.S. at 369, (listing permissible non-electioneering disclosure

requirements, including independent expenditures and lobbying).

Finally, the Freedom Foundation questions the weight of the State's interest in promoting transparency. Disclosure of early support for a proposed initiative will spotlight those interest groups who are most committed to its adoption. The public has a right to know what interest groups are expending sometimes significant resources to promote or block proposed initiatives in the earliest stages. *State v. Permanent Offense*, 136 Wn. App. 277, 284-85, 150 P.3d 568 (2006) (describing electorate's interest in obtaining information about who is supporting ballot propositions).

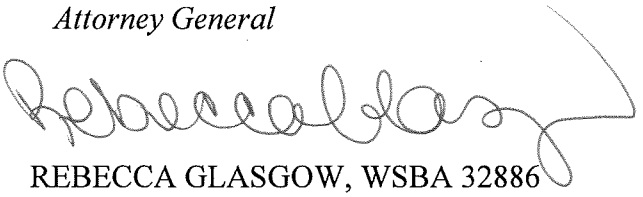
The First Amendment requires only that campaign disclosure requirements show a substantial relation between the requirement and an important government interest. Here, the disclosure requirement is the "least restrictive means" of achieving the compelling interest in transparency for local voters. *Human Life of Wash., Inc.*, 624 F.3d at 1003, 1005-07; *Voters Educ. Comm.*, 161 Wn.2d at 482-83.

V. CONCLUSION

In sum, the interpretation of the Fair Campaign Practices Act presents an issue of substantial public interest warranting review under RAP 13.4(b)(4). This Court should affirm because the Court of Appeals analysis is correct, but also make it clear that the reporting obligation for activities supporting or opposing local initiatives begins upon signature gathering. The constitutional issues raised in this case are not new and they do not justify review under RAP 13.4(b)(3) or (b)(4).

RESPECTFULLY SUBMITTED this 4th day of January 2018.

ROBERT W. FERGUSON
Attorney General



REBECCA GLASGOW, WSBA 32886
Deputy Solicitor General

LINDA A. DALTON, WSBA 15467
Senior Assistant Attorney General

CHAD C. STANDIFER, WSBA 29724
Assistant Attorney General

Office ID 91087
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
360-753-6200

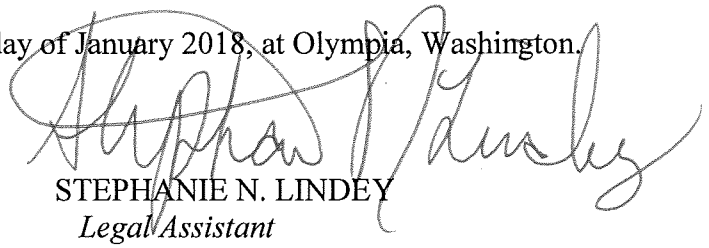
Certificate of Service

I certify, under penalty of perjury under the laws of the state of Washington, that I served, via regular United States Postal Service mail, postage prepaid, and electronic mail, a true and correct copy of the State Of Washington's Answer to Peition for Review, upon the following:

Philip A. Talmadge
Talmadge Fitzpatrick & Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
phil@tal-fitzlaw.com

Mark Lamb
The North Creek Law Firm
12900 NE 180th Street, Suite 235
Bothell, WA 98011-5773
mark@northcreeklaw.com

DATED this 4th day of January 2018, at Olympia, Washington.



STEPHANIE N. LINDEY
Legal Assistant

SOLICITOR GENERAL OFFICE

January 04, 2018 - 4:05 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	95281-7
Appellate Court Case Title:	State of Washington v. Evergreen Freedom Foundation
Superior Court Case Number:	15-2-01936-5

The following documents have been uploaded:

- 952817_Answer_Reply_20180104160335SC228893_5537.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 4_Answer_to_Petition_for_Review.pdf

A copy of the uploaded files will be sent to:

- cfuolyef@atg.wa.gov
- chads@atg.wa.gov
- lindad@atg.wa.gov
- mark@northcreeklaw.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- sgoolyef@atg.wa.gov
- stefany.lontz@ATG.WA.GOV
- stephaniel1@atg.wa.gov

Comments:

Previous version was filed in error. Please delete.

Sender Name: Kristin Jensen - Email: kristinj@atg.wa.gov
Filing on Behalf of: Rebecca R Glasgow - Email: rebeccag@atg.wa.gov (Alternate Email: RebeccaG@atg.wa.gov)

Address:
PO Box 40100
1125 Washington St SE
Olympia, WA, 98504-0100
Phone: (360) 753-4111

Note: The Filing Id is 20180104160335SC228893