

Legal Alerts

Pro Bono Legal Services Supporting Local Ballot Proposition Can Be Reportable Independent Expenditures Even if the Proposition Never Qualifies for the Ballot

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In *State v. Evergreen Freedom Foundation*, the Washington Supreme Court holds independent expenditure reporting requirements in Washington's Fair Campaign Practices Act apply to "expenditures [made] prior to signature gathering, regardless of when they are gathered, but only if the measure is actually filed with an election official." There, Evergreen Freedom Foundation created sample ordinances and local ballot propositions to advance its policies before city councils. Using the forms, local proponents submitted proposed measures to election officers in the cities of Sequim, Chelan and Shelton, along with supporting signatures. None of the cities passed the measures as ordinances or placed them on the ballot. The proponents sued, the Foundation's attorneys represented them, and they lost. But that did not end the matter. The Washington Attorney General received a citizens' complaint alleging the Foundation failed to report as independent expenditures the value of the legal services it provided. After investigation, the Attorney General brought this enforcement action.

The Fair Campaign Practices Act requires organizations like the Foundation to report independent campaign expenditures, including those made in support of or in opposition to ballot propositions. RCW 42.17A.255. The term "ballot proposition" is defined 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(5). The initiative process for code cities (like Sequim, Chelan and Shelton) requires signature gathering before submission to the election officer. So the Foundation argued the local propositions were not "ballot measures" when it provided pro bono legal services by suing the cities. The proponents had already gathered the signatures.

The Washington Supreme Court disagreed. The Foundation's reasoning undermined the Fair Campaign Practices Act's broad disclosure purposes. It also ignored the express language including local propositions

within the definition of "ballot proposition" under RCW 42.17A.005(5). The Foundation's pro bono legal services were therefore reportable.

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