

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 62-CV-18-6812

Honorable Leonardo Castro

Plaintiff,

vs.

**STIPULATION FOR
ENTRY OF CONSENT JUDGMENT**

American Federation of Police and Concerned
Citizens, Inc.,

Defendant.

STIPULATION

The State of Minnesota, by its Attorney General, Keith Ellison, and American Federation of Police and Concerned Citizens, Inc., through their undersigned counsel of record, hereby stipulate and agree to the entry of the Consent Judgment and Order attached hereto.

Dated: December 13, 2019

KEITH ELLISON
Attorney General
State of Minnesota

/s/Carol R. Washington
CAROL R. WASHINGTON
Assistant Attorney General
Atty. Reg. No. 0390976

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 757-1298 (Voice)
(651) 296-1410 (TTY)
carol.washington@ag.state.mn.us

ATTORNEYS FOR STATE OF MINNESOTA

Dated: December 13, 2019

WINTHROP & WEINSTINE, P.A.

/s/Christianna L. Finnern

CHRISTIANNA L. FINNERN

Atty. Reg. No. 310724

DAVID M. AAFEDT

Atty. Reg. No. 27561X

225 South Sixth Street, Suite 3500

Minneapolis, MN 55402

Telephone: (612) 604-6400

Facsimile: (612) 604-6800

daafedt@winthrop.com

cfinnern@winthrop.com

ATTORNEYS FOR DEFENDANT

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 62-CV-18-6812

Judge Leonardo Castro

Plaintiff,

vs.

**CONSENT JUDGMENT
AND ORDER**

American Federation of Police and Concerned
Citizens, Inc.,

Defendant.

RECITALS

WHEREAS, on October 11, 2018, Plaintiff State of Minnesota, by its Attorney General, Keith Ellison (“State” or “AGO”), as substituted, served a Complaint against Defendant American Federation of Police and Concerned Citizens, Inc. (“AFPCC”) initiating the above-captioned action (“Complaint”), which is incorporated herein by reference;

WHEREAS, the undersigned natural persons who have signed this Consent Judgment in their individual capacities and on behalf of AFPCC, currently serve on AFPCC’s Board of Directors (“Directors”);

WHEREAS, on December 18, 1996, the Court signed a Consent Decree binding AFPCC and its then-Directors in their individual capacities to its provisions (“1996 Consent Decree”);

WHEREAS, the AGO and AFPCC desire to fully resolve through this Consent Judgment the claims set forth in the Complaint;

NOW, THEREFORE, the AGO and AFPCC, and Directors hereby agree to entry of an Order with the following terms and conditions:

INJUNCTIVE RELIEF

1. AFPCC, whether directly, indirectly, individually, representatively, or in combination with or through a professional fundraiser or any other person or entity, is hereby permanently enjoined from soliciting contributions from Minnesota donors, from accepting or receiving contributions from Minnesota donors as a result of any new or prior solicitation, and from otherwise operating or doing business in Minnesota, provided that it shall not be a violation of this Consent Judgment if a third-party over which AFPCC has no control inadvertently solicits a de minimus number of Minnesota donors on behalf of AFPCC, or if a third-party improperly accesses AFPCC's donor database and sends solicitations acting as if the third party were AFPCC. If AFPCC receives a donation from a Minnesota donor inadvertently solicited by such a third party on behalf of AFPCC, AFPCC shall return the donation and promptly notify the AGO in writing about the matter. "Minnesota donor" means any person or donor with a Minnesota address or a telephone number with one of the following area codes: 218, 320, 507, 612, 651, 763, or 952. Nothing herein shall preclude AFPCC from continuing to provide program services that benefit Minnesota residents.

2. Directors, whether acting directly, indirectly, individually, representatively, or in combination with or through any other person or entity, agree to refrain from engaging in any of the following conduct:

- (a) acting as an executive director, officer, director, board member, or otherwise manage or oversee the affairs of any charitable organization or professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;
- (b) accepting any salary, wages, compensation, benefits, reimbursement, securities, dividends, ownership interest, or anything else of value from any charitable organization or professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential

Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;

- (c) forming, participate in forming, create, organize, or otherwise establish any charitable organization or professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;
- (d) assisting, advise, or consult with or for any charitable organization or professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;
- (e) accepting any salary, wages, compensation, benefits, reimbursement, securities, dividends, ownership interest, or anything else of value from any escrow agent, caging company, or any other entity that accepts, receives, or otherwise controls any monies, funds, assets, or other property solicited from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;
- (f) accepting any salary, wages, compensation, benefits, reimbursement, securities, dividends, ownership interest, or anything else of value from any entity that provides management or other services related to managing, coordinating, or overseeing the operations of any charitable organization or professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota;
- (g) accepting any salary, wages, compensation, benefits, reimbursement, securities, dividends, ownership interest, or anything else of value from any entity that serves as a broker of agreements between any charitable organization and any professional fundraiser that solicits contributions in Minnesota, solicits contributions from any potential Minnesota donor, accepts or receives any contribution from any Minnesota donor as a result of any new or prior solicitation, or that otherwise operates or does business in Minnesota; and
- (h) accepting any salary, wages, compensation, benefits, reimbursement, securities, dividends, ownership interest, or anything else of value from, any corporation, company, organization, group, firm, cooperative, joint

venture, association, partnership, trust, joint stock association, foundation, church, religious sect, society, league, or other entity that engages in any of the activities or conduct described in Paragraphs 2(a) through (g).

Notwithstanding the above, Directors may still enter into contractual agreements with entities that do business in Minnesota, so long as such entities refrain from doing business in Minnesota on behalf of AFPCC, on behalf of any Director, and on behalf of any other entity related to Directors, including but not limited to any entity for which any Director serves any role referenced in Paragraphs 2(a), (b), (e), (f), or (g). For purposes of this Consent Judgment, “contribution,” “solicit,” “charitable organization,” and “professional fundraiser” have the meanings given them by Minnesota Statutes section 309.50.

3. For the time period commencing from the date the Court enters this Order and ending six years thereafter, AFPCC and Directors shall use their best efforts and in good faith fully, completely, truthfully, and promptly cooperate with any investigation into third parties arising from or related to the allegations contained in the Complaint, as well as any future proceeding related to or arising out of said allegations. The cooperation required by this paragraph includes but is not limited to responding to any request by the AGO with accurate, truthful, and complete information, documents, data, and testimony, as applicable, and by causing and ensuring, upon reasonable written notice by the AGO, that AFPCC or the requested Directors appear via video conference for interviews, depositions, hearings, trial, and any other proceedings, without service of a subpoena or other form of compulsory process. For the time period commencing from the date the Court enters this Order and ending six years thereafter, upon the written request of the AGO, AFPCC and Directors shall promptly provide accurate and complete information, documents, and data that the AGO, in its sole discretion, deems reasonably necessary to verify their compliance with this Consent Judgment, including but not

limited to donor records, financial records, bank registers and statements, financial accounts and statements, accounting data, and minutes of meetings of AFPCC's board of directors.

4. Notwithstanding any other language in this Consent Judgment, AFPCC and Directors are not precluded by this Consent Judgment from dissolving AFPCC. In all other respects, AFPCC and Directors are hereby enjoined from effecting any change in AFPCC's or any other entity's form of doing business, organizational identity, organizational structure, affiliations, or management composition as a method of avoiding the terms of this Consent Judgment. Directors are further permanently enjoined from effecting any change in their ownership stake in, or management authority over, any entity in which they have such ownership stake or management authority as a method of, or if the effect is, assisting the entity in avoiding the terms of this Consent Judgment. Directors are further permanently enjoined from engaging in any conduct prohibited by this Consent Judgment through or in combination with a family member or any other person.

MONETARY PAYMENT

5. AFPCC is liable for, shall execute a Confession of Judgment for, and shall pay monetary relief to the AGO under Minnesota Statutes sections 8.31 and 309.57 totaling \$298,637, as follows:

- (a) On or before January 1, 2020, AFPCC shall pay \$30,000 to the AGO.
- (b) AFPCC shall pay the AGO ten separate monthly payments of \$5,000 on the first day of each month between and including February 1, 2020, through November 1, 2020, totaling \$50,000.
- (c) On or before September 30, 2021, AFPCC shall pay \$60,000 to the AGO.
- (d) On or before September 30, 2022, AFPCC shall pay \$60,000 to the AGO.
- (e) On or before September 30, 2023, AFPCC shall pay \$60,000 to the AGO.
- (f) On or before September 30, 2024, AFPCC shall pay \$38,637 to the AGO.

6. The AGO shall have the option to distribute monies it receives pursuant to this Consent Judgment in an equitable manner as restitution under applicable law, including to Minnesota persons who donated to AFPCC. Monies the AGO receives pursuant to this Consent Judgment may also be used for settlement administration expenses, including but not limited to payment to a settlement administrator. Any monies the AGO receives pursuant to this Consent Judgment that are not distributed to Minnesota persons who donated to AFPCC or used for settlement administration expenses shall be deposited into the State General Fund.

7. The monies to be paid under Paragraph 5 shall be sent payable to the “Minnesota Attorney General’s Office” at the following address: Carol Washington, Assistant Attorney General, Minnesota Attorney General’s Office, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101.

8. If AFPCC does not comply with the payment requirements contained in Paragraph 5, AFPCC consents to and authorizes the AGO to, *ex parte*, immediately file with the Court the Confession of Judgment signed in relation to this Consent Judgment pursuant to Minnesota Statutes section 548.22, thereby rendering AFPCC immediately liable for the entire payment amount referenced in Paragraph 5, minus any amounts already paid to the AGO pursuant to this Consent Judgment. AFPCC consents to the Court Administrator or Clerk of Court entering the Confession of Judgment forthwith without any additional notice or other action.

STAYED RELIEF

9. AFPCC shall be liable for an additional civil penalty of \$200,000 if the Court finds, after a motion by the AGO, and pursuant to a hearing as determined by the Court, that AFPCC violated any provision of this Consent Judgment. Each Director shall be individually liable for an additional civil penalty of \$50,000 if the Court finds, after a motion by the AGO,

and pursuant to a hearing as determined by the Court, that such Director violated any provision of this Consent Judgment. Except for violations of Paragraph 1, with respect to AFPCC, and for violations of Paragraph 2, with respect to any Director, the stayed civil penalties described in this paragraph shall be permanently lifted once AFPCC has complied with the payment requirements contained in Paragraph 5 of this Consent Judgment.

10. The release provided for in Paragraph 12 of this Consent Judgment does not prevent, restrict, or otherwise limit in any way the AGO from moving for, using any information and materials in its possession, and, should a violation be found, collecting the stayed civil penalties referenced in Paragraph 9.

GENERAL TERMS

11. This is a compromise settlement of a disputed claim. AFPCC and Directors neither admit nor deny the allegations in the Complaint through this Consent Judgment.

12. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the AGO, upon approval of this Consent Judgment by the Court, hereby fully and completely releases AFPCC and Directors from any and all claims by the AGO for violations of Minnesota Statutes sections 309.53, 309.55, and 309.556, and the 1996 Consent Decree, arising out of the allegations contained in the Complaint in the above-captioned action, up to and including the date of this Consent Judgment. The AGO through this Consent Judgment does not settle, release, or resolve any claim against AFPCC or Directors or any other person or entity involving any private causes of action, claims, and remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. This release does not apply in any way to claims of any other State of Minnesota agency, department, official, or division, including but not limited to the Minnesota Department of Revenue.

13. The claims, remedies, and relief provided for in this Consent Judgment are in addition to all other claims, remedies, and relief available to the State of Minnesota or the AGO.

14. AFPCC and Directors shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO have approved of, condoned, or agree with any alleged conduct, actions, or inactions by AFPCC or Directors.

15. Nothing in this Consent Judgment shall relieve AFPCC or Directors of their obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

16. AFPCC and Directors, after having an opportunity to consult with counsel, knowingly, intelligently, and voluntarily waive their First Amendment rights to the extent, if at all, such rights are inconsistent with any of the terms of this Consent Judgment.

17. If this Consent Judgment is violated, AFPCC and Directors agree that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the operative Complaint in this action or this Consent Judgment, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Consent Judgment.

18. In any subsequent civil litigation by or on behalf of the State, including a nondischargeability complaint or other proceeding to enforce the State's rights to any payment or monetary judgment under this Consent Judgment in bankruptcy court, the facts alleged in the Complaint shall and will be taken as true without the need for any further proof, evidence, or other showing.

19. The facts alleged in the Complaint establish all elements necessary to sustain an action by the State pursuant to 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(4), and/or 11 U.S.C. § 523(a)(7), and this Consent Judgment will have collateral estoppel and/or res judicata effects

for such purposes. AFPCC and Directors further agree that the entirety of the award of restitution, disgorgement, and/or civil penalties under this Consent Judgment is nondischargeable debt under these statutes, and waives any right to contest or otherwise dispute the matter.

20. Within ten business days of the Court's entry of an order approving this Consent Judgment, the AGO and AFPCC shall file a Stipulation of Dismissal with Prejudice, dismissing the matter with prejudice and without additional costs and fees (other than any payments required herein) to either party.

21. The persons signing this Consent Judgment for AFPCC warrant that its board of directors has authorized the persons to execute this Consent Judgment, that they execute this Consent Judgment in an official capacity that binds AFPCC and its successors, and that AFPCC has been fully advised by its counsel or have voluntarily forgone such advisement before entering into the Consent Judgment.

22. This Consent Judgment may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Consent Judgment may be executed by facsimile or electronic copy in any image format.

23. This Consent Judgment constitutes the full and complete terms of the agreement between the AGO, AFPCC, and Directors. This Consent Judgment is intended to and does replace and supersede the 1996 Consent Decree in all respects, and the 1996 Consent Decree is rendered null and void in its entirety upon the Court's approval of this Consent Judgment.

24. Service of notices or other documents required or permitted by this Consent Decree shall be served on the following persons, or any person subsequently designated by the parties to receive such notices, by mail and email at the addresses identified below:

As to State of Minnesota:

Carol R. Washington, Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101
carol.washington@ag.state.mn.us

As to AFPCC and Directors:

Christianna L. Finner
David M. Aafedt
Winthrop & Weinstine, P.A.
225 S. 6th St, Suite 3500
Minneapolis, MN 55402

and

Brent Shepherd, CFO/DO
6350 Horizon Drive
Titusville, Florida 32780
brents@aphf.org

25. The failure of a party to exercise any rights under this Consent Judgment shall not be deemed to be a waiver of any right or any future rights.

26. This Consent Judgment, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

27. Nothing in this Consent Judgment shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein with regard to AFPCC and Directors.

28. Each of the signatories to this Consent Judgment participated in the drafting of this Consent Judgment and agree that the Consent Judgment's terms may not be construed against or in favor of any of the signatories by virtue of draftsmanship.

29. Each signatory shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Consent Judgment. AFPCC

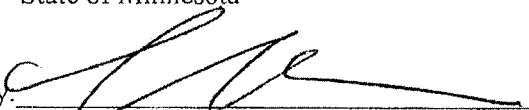
and Directors shall promptly comply with any reasonable request from the AGO for information regarding verification of their compliance with this Consent Judgment. The AGO shall have all powers specified by Minn. Stat. §§ 8.31, 309.553, 309.57, and all other authority otherwise available to it for purposes of investigating and remedying violations of this Consent Judgment.

30. The AGO may file this Consent Judgment with the Court without further notice to AFPCC and Directors, and the Court may approve and enter this Consent Judgment *ex parte* and without further proceedings.

31. The Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment, and all signatories hereto consent to the jurisdiction of the Court for the purposes of enforcing this Consent Judgment.


KEITH ELLISON
Attorney General
State of Minnesota

Dated: 12/13/19

By: 
Carol Washington
Assistant Attorney General
On behalf of State of Minnesota

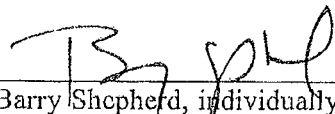
AMERICAN FEDERATION OF POLICE
AND CONCERNED CITIZENS, INC.

Dated: Dec 11, 2019

By: 
Brent A. Shepherd, Chief Financial Officer
On behalf of American Federation of Police
and Concerned Citizens, Inc.

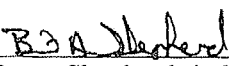
BARRY SHEPHERD

Dated: Dec 13, 2019

By: 
Barry Shepherd, individually and as a Director
for AFPCC

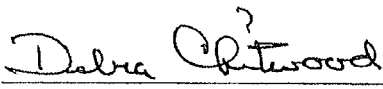
BRENT SHEPHERD

Dated: Dec. 11, 2019

By: 
Brent Shepherd, individually and as a Director
for AFPCC

DEBRA CHITWOOD

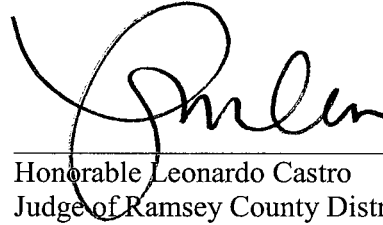
Dated: Dec. 13, 2019

By: 
Debra Chitwood, individually and as a Director
for AFPCC

ORDER

Having reviewed the terms of the foregoing Consent Judgment, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Dated: December 16, 2019



Honorable Leonardo Castro
Judge of Ramsey County District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.