

1 Hearing Date: Friday, May 14, 2021  
2 Hearing Time: 9:00 a.m.  
3 Judge: Hon. Dixon  
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7 SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF THURSTON

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 TIM EYMAN et al.,

13 Defendants.

Case No. 17-2-01546-34

DEFENDANT EYMAN'S MOTION FOR  
RECONSIDERATION

14 Comes now Defendant Tim Eyman (hereafter "Mr. Eyman") and respectfully requests an  
15 order granting reconsideration, amendment of judgment and or a new trial based on CR 59 and the  
16 following matters of fact and law.

17 **1. TRIAL COURT VIOLATED MR. EYMAN'S RIGHT TO PRIOR NOTICE**  
18 **AND PRESENTATION OF PROPOSED FINDINGS**

19 On February 10, 2021, the trial court read into the record its summary of Findings and Fact  
20 and Conclusions of Law. No prior notice was afforded to Mr. Eyman of the specific proposed  
21 content nor were questions or comments permitted. At the conclusion of the hearing, the Court  
22 signed same without further comment. Thereafter Mr. Eyman's attorney filed an objection for the  
23 record without response from the Court.  
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DEFENDANT EYMAN'S MOTION FOR  
RECONSIDERATION-1

210426.Eyman Motion for Reconsideration

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1 The Findings and Conclusions were a voluminous 32 pages with over 100 paragraphs.  
2 Interspersed in the labeled findings of fact were demeaning terms referencing Mr. Eyman rather a  
3 neutral and objective renditions of specific facts as is the usual format of factual findings. Also  
4 interspersed were legal conclusions and many events and circumstances outside the statute of  
5 limitations and therefore not relevant. Some of the findings run on for nearly a page.

6 The Court provided Mr. Eyman no notice nor right of response contrary to CR 52 and Due  
7 Process.

8 **Presentation.** Unless an emergency is shown to exist, or a party has failed to appear  
9 at a hearing or trial, the court *shall not* sign findings of fact or conclusions of law  
10 until the defeated party or parties have received 5 days' notice of the time and place of  
the submission and have been served with copies of the proposed findings and  
conclusions.

11 CR 52(c) (italics added). The Court *did sign* its February 10 Findings without providing Mr. Eyman  
12 the minimum 5 days' notice, notwithstanding merely 5 days would be grossly inadequate notice to  
13 deal with this voluminous pleading. Rather "The purpose of CR 52(c) is to afford the defeated party  
14 an opportunity to evaluate and object to the contents of its opponent's proposed findings before the  
15 court adopts and enters those findings." 224 Westlake, LLC v. Engstrom Properties, LLC, 169  
16 Wn.App. 700, 708, 281 P. 3d 693 (2012).

17 The Court entered its February 10<sup>th</sup> Findings without even providing Mr. Eyman the  
18 mandatory minimum 5 days' notice. Mr. Eyman objects to the violation of his right to notice of  
19 presentation and moves this court to set aside and vacate Findings and Fact and Conclusions of Law  
20 entered contrary to law and CR 52.

21 The Findings fail to specifically find the claimed "prejudice" upon which the partial  
22 summary judgment Order of September 13, 2019 relied – that Mr. Eyman was concealing the  
23 identity of his donors — was false. The Summary Judgment Declarant, State investigator Tony  
24  
25

Perkins, admitted he previously had the name, telephone number, address, date and amount of all contributions from all donors to Mr. Eyman.

The findings relate that the Court “found on partial summary judgment” certain matters while “findings” on summary judgment are superfluous and of no effect or consequence whatsoever.

Unique to these “Findings” is a purported “injunction,” rather than a separate document entitled “Injunction.” In no sense is an injunction a “finding” or a “conclusion.” The “injunction” is an incredibly detailed and an absolute violation of Mr. Eyman’s First Amendment rights, for which this Court has provided Mr. Eyman no notice nor right of response contrary to CR 52 and Due Process.

## **2. COURT’S JUDGMENT BASED ON PERJURED TESTIMONY**

On September 13, 2019 this Court entered its Order on Non-monetary Relief. The Order characterized Mr. Eyman as a “continuing Political Committee,” characterized \$766,447 in personal gifts from Mr. Eyman’s friends for Mr. Eyman and family’s living expenses as “political contributions,” claimed Mr. Eyman had a duty to report all of those “political contributions” as electoral campaign contributions and set him up for millions of dollars in fines and crippling sanctions for violating the FCPA — all without a trial or hearing on the merits.

The Order was based on the State’s motion of September 5, 2019 and the Declaration of Tony Perkins of even date. The motion was purportedly brought pursuant to CR 37 based on the State’s claim that Mr. Eyman had not been sufficiently compliant with the State’s discovery demands.

Central to the required showing to justify such an order is proof of substantial prejudice. That showing was purportedly provided by the Perkins Declaration of September 5, 2019:

The best example of how the Eyman Defendants’ longstanding misconduct in discovery has impaired the State’s ability to prepare for trial is their concealment of donor identities.



1 Although Mr. Eyman's efforts to demonstrate the perjury were thereafter frustrated by the  
2 State and the Court, the declaration was false. The Court quashed Eyman's CR 30(b)(6) notice of  
3 deposition for the State to testify on this topic in its scheduled January 2020 deposition. So too, the  
4 Court quashed Mr. Eyman's notice and subpoena to the State for trial pertaining to this topic.

5 But the State could not stop trial cross examination of its witness, Tony Perkins. Mr.  
6 Perkins, reluctantly and evasively, testified he had all the cancelled checks for the \$766,447 for a  
7 year prior to his September 5 declaration and that for each of the donors Mr. Eyman "concealed",  
8 Perkins had the canceled checks. Ex. A 29. He had the date of the check, the name of the donor, the  
9 amount, the address, and in most cases the telephone number of the donor. In short, he lied under  
10 oath, committed perjury suborned by the AG and admitted it:

11  
12 ***Q: But you were aware of the identities at the time, weren't you?***

13 ***A: Yes, yes.***

14 This Court interrupted your undersigned during closing argument to attest that despite the  
15 lack of any record of colloquy at the CR 37 hearing, the Court did in fact carefully consider what  
16 was before it at the time. This would have included Perkins Declaration attesting that substantial  
17 prejudice justified the summary judgment Order because Mr. Eyman had concealed his donors'  
18 identities. At the time of oral argument, your undersigned requested the Court not base its judgment  
19 on perjured testimony and make a finding to that effect. There was no finding. The Court  
20 reaffirmed the summary judgment Order and the partial summary judgment based thereon.

21 Moreover there was a separate, completely independent basis proving the Court had actual  
22 knowledge that Mr. Eyman was *not* withholding the identity of any donor: Mr. Eyman's Motion for  
23 Reconsideration (September 23, 2019). Exhibit B to that pleading contained Mr. Eyman's signed  
24 authorization for the Attorney General to access all his bank accounts including canceled checks,  
25

1 everything. In addition, the Attorney General apparently used those very authorizations to copy  
2 more recent bank records not including the \$766,447 to justify an additional \$71,000 in “political  
3 contributions” and thousands of dollars in additional fines. Nevertheless, the Court denied the  
4 motion for reconsideration summarily, without comment or explanation. And the Court continued to  
5 deny Mr. Eyman his right to a fair trial before an impartial judge based on perjured testimony.

6 Case law is clear that because CR 37 can result in such a severe sanction as to preclude a trial  
7 on the merits there must be proof the failure to obey a discovery order “substantially prejudiced the  
8 opponent’s ability to prepare for trial.” *Burnett v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933  
9 P.2d 1036 (1997), citing *Snedigar v. Hidderson*, 53 Wn.App. 476, 487, 768 P.2d 1 (1989) (citing due  
10 process concerns) Conclusions regarding prejudice are not enough, the court must put details on the  
11 record. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 694-96, 41 P.3d 1175  
12 (2002). See also *Marina Condominium v. Stratford*, 161 Wn.App. 249, 261, 254 P.3d 827 (2011)  
13 (conclusions of prejudice are inadequate) Failure to analyze considerations of prejudice on the  
14 record is an abuse of discretion. *Id.* at 262

15 Here not only was there no discussion on the record, what *is* on the record is perjurious. Not  
16 only was Mr. Eyman denied a fair trial but the error infected the most basic issue in the trial and the  
17 great majority of the monetary and non-monetary sanctions assessed.

18 The State would like to sweep this under the carpet — but honesty is the basic tenant of the  
19 civil *justice* system — if not the *government* court system. Mr. Eyman objects.

20  
21 **3. THE COURT’S FINDINGS VIOLATE MR. EYMAN’S FIRST AMENDMENT**  
22 **RIGHT TO RECEIVE PRIVATE FINANCIAL ASSISTANCE FROM ANY AND ALL**  
23 **SOURCES**

24 Mr. Eyman is not a rich or wealthy man and never would have made it through the years of  
25 investigation and litigation without the financial assistance, charity, and alms from people who chose



1 to voluntarily help him. Why should Mr. Eyman, who personally paid for and sent unobtrusive  
2 requests for help via letters and emails, have fewer rights than a panhandler on the streets of  
3 Lakewood? As witness Larry Jensen said on the stand "I helped Tim because I felt sorry for him for  
4 what the State was doing to him and his family."

5 The Court has deemed Mr. Eyman a one-man "continuing political committee," thereby  
6 subjecting his personal finances to all of the reporting requirements of the FCPA. (Findings 2.57 and  
7 2.58). Not only must all money received and how it is spent be reported each month (RCW  
8 42.17A.235), but Mr. Eyman is also robbed of his right to expend these charitable gifts as he sees fit  
9 for the support of himself and his family. This Court has enjoined him from having any say in how  
10 such financial assistance shall be spent. (Findings pp. 30-32, 4<sup>th</sup> injunction with 11 subparts)<sup>1</sup>

11 The Court's Findings, in effect, not only make Mr. Eyman a pauper but rob him of his  
12 constitutional right to ask the merciful for their charity. He is reduced to an involuntary ward of the  
13 State with the Attorney General, PDC, and this Court as his guardians (or guards?). These  
14 requirements are an outrageous, unconstitutional intrusion into Mr. Eyman's personal affairs and his  
15 First Amendment right to seek the charity of others.  
16

17 The right of an individual to ask for financial assistance from others, whether it be referred to  
18 as requesting alms, charity or even begging, is protected expression under the First Amendment of  
19 the United States Constitution. The astronomically expensive costs incurred by Mr. Eyman for the  
20 State's investigation, litigation and trial have left Mr. Eyman subject to the same legal analysis as a  
21 beggar. He has a First Amendment right to beg and it is not subject to control of this Court or the  
22 government.  
23  
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25 <sup>1</sup> The scope of these injunction provisions is even more problematic because RCW 42.17A.445 prohibits personal use of contributions, which means in Mr. Eyman's case, even if he could ask for financial assistance, he could not receive it.

1 Black's Law Dictionary (rev. 4<sup>th</sup> ed.) defines to beg as "To solicit alms or charitable aid." A  
2 "beggar" is defined as "One who lives by begging charity, or who has no other means of support  
3 than solicited alms."

4 There is a wealth of law on the question of whether the First Amendment secures begging –  
5 the solicitation of alms. Virtually all the cases present the question in the context of anti-panhandling  
6 laws, dealing with how aggressive the begging is, and the propriety of begging in a particular public  
7 context.

8 But Mr. Eyman's individual First Amendment right to beg is even more fundamental and  
9 absolute. Mr. Eyman is not on the street harassing people at ATMs and traffic medians. He solicits  
10 alms through pure speech conducted in person, through the mail, over the telephone and over the  
11 airways. Thus he has an absolute First Amendment right to seek assistance not to be frustrated or  
12 diminished by the State. This Court must protect and defend Mr. Eyman's constitutional rights to  
13 free speech. So, to the basic point – does Mr. Eyman have a First Amendment right to ask for money  
14 to help he and his family survive the litigation in this case? The answer is "yes." Obviously.

15 The United States Supreme Court has addressed charitable solicitations as an exercise of the  
16 unquestioned First Amendment right to receive them. The leading cases are *Village of Schaumburg*  
17 *v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Riley v. Nat'l Fed'n of the Blind of N.C.*,  
18 *Inc.*, 487 U.S. 781 (1989); *United States v. Kokinda*, 497 U.S. 720 (1990); and *International Society*  
19 *for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992). Without dispute, solicitation for  
20 charitable giving is a protected First Amendment activity.

21 For example, "Charitable solicitation by individuals is protected by the First  
22 Amendment," *ACLU of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 916 (D. Idaho 2014),  
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1 which drew upon the 9<sup>th</sup> Circuit's First Amendment protection to Seattle's street performers  
2 described in *Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009) (en banc).

3 "[T]he speech and expressive conduct that comprise begging merit First Amendment  
4 protection." *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4<sup>th</sup> Cir. 2013). "'We see little  
5 difference between those who solicit for organized charities and those who solicit for themselves in  
6 regard to the message conveyed. The former are communicating the needs of others while the latter  
7 are communicating their personal needs. Both solicit the charity of others. The distinction is not  
8 significant for First Amendment purposes." *Loper v. New York City Police Dep't*, 999 F.2d 699, 704  
9 (2d Cir. 1993). "Like other charitable solicitation, begging is speech entitled to First Amendment  
10 protection." *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11<sup>th</sup> Cir. 1999).

11 The Washington State Supreme Court agrees. "The First Amendment protects 'charitable  
12 appeals for funds' . . . including appeals in the form of begging or panhandling . . . ." *City of*  
13 *Lakewood v. Willis*, 186 Wn.2d 210, 217, 375 P.3d 1056 (2016) (citing *Schaumburg, Gresham v.*  
14 *Peterson*, 225 F.3d 899, 904 (7<sup>th</sup> Cir. 2000); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956  
15 (11<sup>th</sup> Cir. 1999); *Loper v. N.Y. City Police Dep't*, 999 F.2d 699, 704 (2d Cir. 1993)). The  
16 government bears the burden to justify its restrictions on speech. *Willis*, 186 Wn.2d at 217 (citing  
17 *Collier v. City of Tacoma*, 121 Wn.2d 737, 753-59, 854 P.2d 1046 (1993))

18 There, Mr. Willis was convicted of begging in a restricted area. The ordinance in question  
19 defined begging as "asking for money or goods as a charity, whether by words, bodily gestures,  
20 signs or other means." 186 Wn.2d 214. Mr. Eyman does as much when asking friends and family  
21 for financial assistance to withstand the government's litigation barrage.  
22

23 While the State can put time and place limits on certain First Amendment activity, it cannot  
24 interfere with, much less absolutely stop, Mr. Eyman's constitutional right to request financial  
25



1 assistance by requiring him to report the charity he receives and then deny him to right to possess the  
2 charity provided. But this Court would empower the State to steal from the beggar's cup and snatch  
3 the charity of others from the collection plate. This not only violates the First Amendment but is  
4 deeply immoral. Same would be akin to the City of Lakewood allowing Mr. Willis to beg on the  
5 street but only with a police officer standing next to him to confiscate the money freely given by the  
6 merciful to the needy. By law, all income to a political committee may not be spent for the support  
7 of individuals — precisely the opposite of First Amendment protected begging. The State may seek  
8 to destroy Mr. Eyman but to do so it must destroy the Bill of Rights first.

### 9 CONCLUSION

10 Ample grounds for reconsideration under CR 59 are presented by this motion. Mr. Eyman's  
11 right to notice and presentation of the Court's voluminous Findings and Conclusions secured by CR  
12 52 (c) was blatantly violated. The Court's September 13, 2019 order for non-monetary relief, and  
13 the millions in fines and punitive sanctions which followed it, was based on perjury suborned by the  
14 Attorney General. The Court denied Eyman his First Amendment right to seek and keep the mercy  
15 offered by others — the First Amendment right to beg. This judgment must be reconsidered and Mr.  
16 Eyman's rights restored.  
17

18 Respectfully submitted this 26th day of April, 2021.

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