

SUPREME COURT
OF THE STATE OF WASHINGTON

TIM EYMAN AND
TIM EYMAN WATCHDOG FOR
TAXPAYERS LLC,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

No. 100040-5

Thurston Co. Superior Court No.
17-2-01546-34

MOTION FOR STAY PENDING
APPEAL

I. IDENTITY OF MOVING PARTY

TIM EYMAN (Appellant) asks for the relief designated in Part 2.

II. STATEMENT OF RELIEF SOUGHT

Mr. Eyman requests the Court to enter an order under the authority of RAP 8.1(b)(3) staying enforcement of the trial court's judgment for all injunctive relief including registration and reporting as a "continuing political committee" and all prior restraint of free speech activities.

III. FACTS RELEVANT TO MOTION

This case involves the unprecedented finding by a Trial Court that one individual is a "continuing political committee" under Washington State's Fair Campaign Practices Act (FCPA), Chapter 42.17A¹. No other individual has ever been so labeled or so burdened. Moreover, the Trial

¹ RCW 42.17A.005(14)

Court ordered expansive and draconian prior restraint injunctive relief prohibiting Mr. Eyman from exercising fundamental First Amendment speech activities in the initiative process. See **Exhibit A**, Findings pp. 30-32

A Stay of enforcement is warranted while this decision is under review because the Trial Court has staked out new and chilling legal territory, imposed resulting draconian and crippling monetary penalties, and infringed so deeply on Mr. Eyman and his friends' First Amendment constitutional rights.

On April 16, 2021, the Thurston County Superior Court entered a final judgment against Mr. Eyman awarding both monetary and injunctive relief to the State of Washington.² The judgment was based on Findings and Conclusions entered on February 10, 2021. Among other things, the trial court found that Mr. Eyman is a "continuing political committee." As a "continuing political committee" he must register, hire a treasurer, relinquish control of his own resources, and report all income from whatever source and all expenditures for whatever purpose. He may not spend his own money on himself. RCW 42.17A.445. The Court further

² Mr. Eyman is currently in bankruptcy (Case no. 18-14536-MLB, USBC WDWA) and accordingly any enforcement of the monetary relief awarded against him is automatically stayed subject to the bankruptcy plan which requires monthly payments of \$11,500. 11 USC §362.

found Mr. Eyman had failed to comply with these multiple reporting requirements and fined him over \$2.6 million. The State even claimed he had the duty to publicly report payment of child support, rent, taxes, groceries, everything.

The determination that Mr. Eyman individually is a “continuing political committee” is unique in the history of the FCPA. No other individual has ever been designated as such as by its very definition a “continuing political committee” must be an “organization.” RCW 42.17A.005(14)

The additional injunctive relief awarded to the State of Washington was equally unprecedented. It amputates individual Mr. Eyman from most, if not all, future political activity, including:

- a. Prohibiting Mr. Eyman from receiving funds or payment from any person or vendor who has or might provide services to a political committee associated with Mr. Eyman.
- b. Requiring Mr. Eyman to report to the Washington Public Disclosure Commission (“PDC”) any gifts, donations, or other funds received by him in any context, except (1) funds used for legal defense or (2) W-2 wages paid by an employer.
- c. Prohibiting Mr. Eyman from forever managing, controlling, negotiating or directing financial transactions for any political

committee (even though Mr. Eyman was deemed to personally be one). This includes prohibiting Mr. Eyman from (i) acting as a treasurer for a political committee, (ii) having authority for approving disclosure statements for a political committee, (iii) having authority to authorize expenditures for a political committee, (iv) being an account holder for any bank account holding political committee funds, (v) accepting any contributions to a political committee, (vi) having authority to bind a political committee with respect to expenditures, (vii) having any financial decision-making authority for a political committee nor authority to negotiate expenditures made to outside vendors, (viii) being able to approve or participate in decisions to transfer funds from one political committee to another, (ix) soliciting contributions for himself or his family to support his "political work" without first establishing a political committee, with all decisions for committee expenditures made by persons other than Mr. Eyman, (x) negotiating a loan to a political committee unless all terms are in writing and negotiated on behalf of the committee by persons other than Mr. Eyman, and (xi) soliciting payments from contributors directly to campaign vendors, and

- d. Prohibiting Mr. Eyman from “misleading” anyone from donating to a political committee.³

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 8.1 governs supersedeas procedure. In a civil case involving equitable relief the Court may “stay enforcement of the trial court decision upon such terms as are just.” RAP 8.1(b)(3). Factors to be considered include: (1) “whether the moving party can demonstrate that debatable issues are presented on appeal” and (2) comparing “the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.” RAP 8.1(b)(3).

A. Debatable Issues Are Presented on Appeal In Spades

The highly debatable, first impression issues presented by this case are manifold, presenting an opportunity for this Court to properly construe provisions of the FCPA and how they intersect with Mr. Eyman’s First Amendment rights. The case against Mr. Eyman is an unprecedented, intercession of the judiciary (and executive) branches into personal and political activity that is at the very heart of the First Amendment. Mr. Eyman’s April 6, 2018 Motion For Partial Summary Judgment and April

³ It cannot be overlooked that, while designated by the trial court to be a “continuing political committee,” Mr. Eyman is simultaneously prohibited from doing many if not most of the acts of a political committee.

26, 2021 Motion For Reconsideration extensively briefed the associational and expressive conduct infringements of Mr. Eyman's First Amendment rights.⁴ Resolution of the conflict between Mr. Eyman's First Amendment rights and the State's desire to subjugate same to the requirements of the FCPA (and beyond) is more than merely debatable. Rather, review (and ultimately rejection) is crucial to the jurisprudential development of the FCPA and to curbing the State's abuses of it. If the FCPA is not properly construed it is unconstitutional on its face or at least as applied. Following are examples of the many debatable issues raised by this appeal.

1. Prior Restraint Injunctive Relief

RCW 42.17A.750(1)(i) allows a court to enjoin any act prohibited by the FCPA and to compel the performance of any act required by the FCPA. But the statute does not contain a general grant of equitable power allowing the court to just make up injunctions on Mr. Eyman's political activity because it thinks Mr. Eyman is a bad person. To put it bluntly, none of the acts prohibited or compelled by the injunctions in this case are actually derived from FCPA authority.

There are no reported Washington cases interpreting the scope and extent of FCPA's injunctive power, particularly as it might interfere with

⁴ True and correct copies of "Defendant's Motion for Partial Summary Judgment" filed on April 6, 2018 and "Defendant Eyman's Motion for Reconsideration" filed on April 26, 2021 are attached as **Exhibits B and C**, respectively.

protected First Amendment activity.⁵ On this basis alone, the stay is warranted.

Another debatable issue is the standing of the Attorney General to even seek some, or all, of this relief. For example, one injunction prohibits Mr. Eyman from “misleading” donors (the word “misleading” is not defined in the trial court’s order.) Since the FCPA does not address this subject at all, there is real debate that the trial court acted within its authority under the FCPA.⁶

Likewise, the prohibition of receiving payments from vendors who have provided or may provide services to a political committee associated with Mr. Eyman is also not derived from the FCPA. Going through the list of injunctions, this is basically the same for every item. There is no statutory basis for these edicts.

Furthermore, the requirement that Mr. Eyman report to the PDC all monies he receives except for legal defense and W-2 earnings⁷ presents another matter of first impression that is fraught with First Amendment constitutional implications. As briefed in Mr. Eyman’s April 26, 2021

⁵ Cases of first impression concerning important issues should slide the scale in favor of a stay. See e.g. *Shamley v. City of Olympia*, 47 Wn.2d 124, 286 P.2d 702 (1955) and *Boeing Company v. Sierracin Corporation*, 43 Wn.App. 288, 716 P.2d 956 (Div. 1 1986).

⁶ Ordinarily, any disputes over donors claiming to have been “misled” should be resolved between Mr. Eyman and the donors. The State would have no standing under the FCPA to represent the interests of such donors.

⁷ Findings and Conclusions, Exhibit A, page 30, lines 17 to 24.

Motion For Reconsideration, this stranglehold directly impacts Mr. Eyman's ability to survive and support his family. **Exhibit C**, pages 6 through 10. Self-employment is prohibited.

As a result of the State's action, Mr. Eyman has been forced to support himself and his family through the charity of his supporters. Other than donations for legal defense these are charitable gifts which, according to the injunction, must now be reported to the State. Moreover if Mr. Eyman is a "continuing political committee" they must be deposited in the committee account and under the exclusive control of the committee treasurer, someone other than Mr. Eyman. Moreover he may not use the charitable funds for personal purposes. RCW 42.27A.445

The right to request charitable donations (i.e., begging) is protected First Amendment activity. Furthermore, as recently decided by the U. S. Supreme Court, a state cannot require charitable donors' names and amounts to be reported. *Americans for Prosperity Foundation v. Bonta, Attorney General of California*, 594 U.S. ____, No. 19-251, decided July 1, 2021, *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449, 462 (1958). This Court will need consider the effect of the *Americans for Prosperity Foundation v. Bonta* decision on the treatment inflicted by the State upon Mr. Eyman.

All of the above are much more than merely debatable issues; they are

foundational questions about the clash between rights and restrictions, and between First Amendment protections and cancel culture, which demand judicial reckoning.

2. Continuing Political Committee

Without precedent *anywhere* the Trial Court at the urging of the Attorney General designated Mr. Eyman a “Continuing Political Committee.”

This designation fails under the statute for two reasons. First, a “political committee” is defined as a person “having the expectation of receiving contributions or making expenditures *in support of*, or opposition to, any candidate or *any ballot measure*.” RCW 42.17A.005(40)

The political committee definition and reporting requirements are tied to elections, not issue advocacy. *State v. Grocery Manuf. Ass’n*, 195 Wn.2d 224, para. 30, 461 P.3d 334, 345 (2020) (“It applies when an entity has ‘the *expectation* of receiving **contributions**’ to be spent in **elections**,”) (italics in original, bold added) A political committee files a statement of organization when it has the expectation of “receiving contributions or making expenditures *in any election*.” [italics added] RCW 42.17A.205

There is no dispute that the funds characterized as “political

contributions” by the AG and the Court were charitable donations to Mr. Eyman and his family to defray the personal expenses, not contributions to an electoral campaign of any sort. Moreover, it is undisputed none of those charitable donations were actually used by a campaign. They were for Mr. Eyman, and Mr. Eyman is an individual, *not* a ballot measure.

The second flaw in the characterization is only an “organization” may be a “continuing political committee,” not an individual. RCW 42.17A.005(14) No precedent holds otherwise.

The FCPA is a penal statute with class C felony penalties. RCW 42.17A.750(2) As such it must be strictly construed against the government and in favor of the defendant. *State v. Adams*, 163 Wn.2d 277, 284, 178 P.3d 1021 (2008); *State v. Flores*, 164 Wn.2d 1, 17, 186 P.3d 1038 (2008) Where a statute provides both civil and criminal penalties a strict construction against the government is required. See e.g., *Leocal v. Ashcroft*, 543 U.S. 1, n.8, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004) Moreover it must be strictly construed because it trenches on First Amendment liberties. *Buckley v. Valeo*, 424 U.S. 1, 77-78, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)

Were the statute not so construed, it would be unconstitutional on its face or as applied. The government interest in campaign finance reporting of a ballot measure is solely “voter education.” *WIN v. Ripple*, 213 F.3d

1132, 1139 (9th Cir., 2000), *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1007 (9th Cir., 2010) Voter education is not served by public disclosure of Mr. Eyman's private finances and is hence unconstitutional under *Buckley*. Moreover, forced disclosure of his charitable benefactors is equally unconstitutional. See e.g. *Americans for Prosperity, supra*, *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449, 462 (1958), *Lakewood v. Willis*, 186 Wn.2d 210, 217, 375 P.3d 1056 (2016) [Additional authority set forth in the attachments.]

Even if a continuing political committee designation and reporting requirements were consistent with the FCPA, same would be unconstitutional as applied as an unreasonable burden on free speech imposed upon an individual. *FEC v. Massachusetts Citizens for Life, Inc.* (MCLF), 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986)

B. Comparative Injury to the Parties

This Court is to weigh "the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed." RAP 8.1(b)(3).

The PDC's investigation of Eyman's political activities go back at least 20 years. It wasn't even until 2017 that the Attorney General initiated this action.

Given that it has been almost 20 years since a FCPA judgment was entered against Eyman⁸, it surely cannot be the case that the State needs immediate enforcement of the trial court's injunction in order to protect the people of the State of Washington.

In comparison, the burdens the injunctions impose on Mr. Eyman are immediate, obvious, and disturbing. The prohibitions and restrictions imposed on his political and personal activities are unprecedented and impossibly intrusive. Mr. Eyman is ordered to not solicit or receive personal contributions for his "political work" (whatever that means) without having an organizational structure that reports to the PDC. He must report any and all monetary funds received (and the source) excepting only W-2 wages and legal defense funds. The scope of these restrictions are not carefully crafted to be the least intrusive, and bar Mr. Eyman from seeking contributions for supporting his family, for buying groceries, for paying rent, child support, etc.⁹ Being able to pay for those things through charity obviously allows him to devote time to "political work;"¹⁰ however that does not permit the court to impose reporting

⁸ In 2002 Eyman was permanently enjoined from acting as a treasurer for any political committee or being the signer on any committee bank accounts.

⁹ As briefed in Mr. Eyman's reconsideration motion, **Exhibit C**, pages 6 through 10.

¹⁰ An analogy: it's like saying State funds can't be used to support religion but there is nothing to stop an unemployment compensation recipient from making a Sunday donation at church.

requirements and limit his freedom of speech.

The relative burdens between the parties cannot be reasonably compared. The harm to Mr. Eyman from enforcement during his appeal vastly outweighs any harm (real or imagined) to the people of the State of Washington.

A party subject to a mandatory injunction will generally be entitled to a stay on appeal as a matter of right. *State ex rel. Langlie v. Wright*, 25 Wn.2d 703, 707, 215 P.2d 407 (1950). This includes decrees that might be prohibitory in part. 25 Wn.2d at 708. The injunctions against Mr. Eyman are both mandatory and prohibitive.

Wherefore, Mr. Eyman respectfully requests that the Supreme Court enter an order staying enforcement of the trial court's injunctions pending appeal.

Respectfully submitted this 30th day of July 2021.

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