

SUPREME COURT  
OF THE STATE OF WASHINGTON

TIM EYMAN

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

No. 100040-5

REPLY OF APPELLANT TIM  
EYMAN ON MOTION FOR  
STAY PENDING APPEAL

Mr. Eyman need only demonstrate one debatable issue to be eligible for a stay under RAP 8.1. *Purser v. Rahm*, 104 Wash.2d 159, 177, 702 P.2d 1196 (1985), *certiorari dismissed Washington Dept. of Social and Health Services v. Purser*, 107 S.Ct 8, 478 U.S. 1029, 92 L.Ed.2d 763. Here, there are multiple. If this appeal does not present at least a single debatable issue, why did it take the Attorney General 20 pages of his answer trying to debate them?

When a friend of Mr. Eyman sends him a \$25 check – made payable to “Tim Eyman” – and Mr. Eyman spends it on food, is that \$25 a political contribution? Such is an unprecedented interpretation of the Fair Campaign Practices Act (“FCPA”) and is certainly at least “debatable.”

When Mr. Eyman received such a check from a friend, did that transform him into the first ever one-man continuing political committee in Washington state history? That also is a debatable issue. And when Stan Long, the treasurer for Mr. Eyman’s political committees

for 14 years, who was a CPA, tax attorney, and former IRS investigator, determined that that \$25 check was not a political donation and did not report it, is Mr. Eyman legally liable for that non-disclosure or is Mr. Long? That is debatable, especially since the FCPA vests *sole* responsibility for reporting in the treasurer.

As stated in Mr. Eyman's motion for reconsideration, like any other person who falls on tough times, he has a First Amendment right to ask for charitable assistance from those who choose to help. But the injunction specifically prohibits him from doing so (Motion for Stay, Ex. A, page 31, subsection 9): "Defendant Eyman shall not directly solicit contributions to himself or his family ....". If Mr. Eyman is out in public and a person who feels sorry for him offers him \$20 for food, he must refuse to receive it (Ex. A, page 31, subsection 9): "Any contributions must be made directly to the political committee, not directly to Defendant Eyman." Unlike any beggar holding a cardboard sign, Mr. Eyman is legally prohibited from receiving financial assistance from people who choose to provide it unless a stay is granted.

Many of the words used in the injunction's restrictions are undefined by the FCPA. For example, the injunction states: "with respect to any fundraising activity, Defendant Eyman is enjoined from misleading contributors or potential donors directly or indirectly as to why they

should donate to a political committee.” What does “misleading” mean? What does “directly or indirectly” mean? What does “as to why they should donate” mean? Without a stay, Mr. Eyman would have no way of knowing what words he can say or write when fundraising for a political committee and not run afoul of this restriction.

In 2020, Mr. Eyman ran for Governor and fundraising was an essential activity. If he wanted to run for office again while this injunction was in effect, he could not ask a potential donor to contribute to the campaign without wondering whether the donor would later be deposed and asked what Mr. Eyman said when asking him/her to donate.

This injunction orders “Defendant Eyman is enjoined from receiving payments from any person or vendor, directly or indirectly, who has provided or plans to provide paid services to a political committee with which Defendant Eyman is associated or of which he is a member.” What does “associated” mean? Mr. Eyman recently spoke at a “Loren Culp for Congress” rally and encouraged people to support his campaign. Is Mr. Eyman now “associated” with it? If a vendor who works for Mr. Culp’s campaign wants to pay Mr. Eyman to work for them, is that then prohibited? If someone sponsors an initiative that Mr. Eyman supports and he encourages his supporters to donate to it, is he then “associated” with it? There’s no way to know.

The trial court's injunctive relief restrictions are a minefield with no map. The only way Mr. Eyman can avoid stepping on the injunction's many hidden tripwires is by avoiding any meaningful participation in the political process. A stay is warranted.

The Attorney General seeks to mislead the Court that no debatable issues are presented by this appeal. In support he claims Mr. Eyman is obviously a bad person and just look at all of the horrible things he's done!<sup>1</sup> And he argues because Mr. Eyman is a bad person who has done horrible things, the Attorney General is allowed to pursue any conceivable civil remedies, regardless whether they are authorized by the FCPA or not.

Fortunately for the people of the State of Washington, the Attorney General is not the final arbiter which issues are debatable and which are not. And it is also precisely the breadth and scope of the unique, unprecedented punishments imposed on Mr. Eyman that require a stay while this case is under review.

**Injunctions imposed exceed FCPA scope.** The FCPA allows the trial court to grant injunctive relief to compel that which the statute requires and to forbid that which the statute prohibits. RCW 42.17A.750(1)(i). That

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<sup>1</sup> The Attorney General's characterization of Mr. Eyman and the findings and conclusions upon which they are based go the merits of this appeal. Those findings and conclusions are contested by Mr. Eyman as reversible error on the part of the trial court, and entered contrary to CR 52(c). Furthermore, the fact that Mr. Eyman previously sought discretionary review can have no bearing on the issues pertaining to this appeal. RAP 2.3(c).



is the full extent of the FCPA provision for injunctions. The relief of stay is also warranted because the many injunctions against Mr. Eyman are not found in any of the express requirements or prohibitions of the statute. *Motion for Stay*, Ex. A. Rather, they emanate solely from the Attorney General's pretend authority to make up his own punishments against people he decides are bad actors.

Defining the scope of the relief the Attorney General may pursue (and necessarily the trial court's injunction authority) under the FCPA is more than a merely debatable issue. It is a question of first impression. A question of first impression is by definition debatable. *Shamley v. City of Olympia*, 47 Wn.2d 124, 127, 286 P.2d 702 (1955).

**Punishment Imposed Ignores key FCPA definitions.** The key brick in the Attorney General's punitive house of cards is the trial court's finding (as a discovery sanction no less) that Mr. Eyman individually is a one-man continuing political committee: this, despite the fact that the statute defines a continuing political committee as an "organization." RCW 42.17A.005(14).<sup>2</sup>

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<sup>2</sup> The Attorney General argues Mr. Eyman "implies that a person cannot be a continuing political committee." Answer to motion for stay, p. 18. Just to be clear, Mr. Eyman does not "imply" this, he explicitly asserts it as a matter of fact and law.

Instead, the Attorney General says Mr. Eyman is a political activist and that is close enough. Case closed. Nothing to see here. Move along. *Answer to motion for stay*, pp. 18-19.

It cannot be more obvious to a neutral observer that the word “organization” as applied here, requires debatable, first impression, judicial interpretation. Can an individual person also be an “organization” under the terms of this statute?<sup>3</sup> This alone warrants a stay.

**Additional, Multiple Issues Warrant Stay.** When the intersectional First Amendment issues are added to the mix, the application of the injunctive relief to Mr. Eyman’s protected associational and expressive activities has even more heightened elements of urgent debatability. This is particularly so now that the Attorney General is gleefully claiming that Mr. Eyman’s begging for financial support<sup>4</sup> also subjects him to charitable organization regulation.<sup>5</sup> *Answer to motion for stay*, p. 16. The recent Division I decision in *State v. TVI, Inc., d/b/a Value Village* (No. 80915-6-I, 8/16/21) holding that the Attorney General’s attempts to regulate

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<sup>3</sup> As applied to Mr. Eyman, the statute must be strictly construed in his favor. *Motion for Stay*, p. 10.

<sup>4</sup> Contrary to the Attorney General’s assertion, the First Amendment issue pertaining to begging for charitable donations was in fact also raised in Mr. Eyman’s *Motion for Reconsideration*. *Motion for Stay*, Ex. C, p. 6-10

<sup>5</sup> Apparently, Mr. Willis and the thousands of other street beggars in our state will now be required along with Mr. Eyman to register as charitable “organizations” and dutifully report to the Attorney General. *Lakewood v. Willis*, 186 Wn.2d 210, 375 P.3d 1056 (2016). This absurd assertion is indicative of the Attorney General’s animosity towards Mr. Eyman.

charitable solicitations are subject to strict scrutiny piles on even more debatability to the issues.

**In Absence of Harm a Bond is Not Required, Is Futile, and Would Further Punish Mr. Eyman.** The Attorney General asserts if a stay is granted, it should be conditioned on posting a supersedeas bond, cash, or other security. *Answer*, p. 20, fn 10. The rule does not require this. RAP 8.1(b)(3) begins by authorizing stays based on “such terms as are just.” The money judgment is already subject to the bankruptcy stay and no further stay is sought. The Attorney General’s scorched earth approach throughout this protracted eight and half years of “investigation” and litigation against Mr. Eyman has financially ruined him. Everything he’s earned in his lifetime is gone. All he received from friends over the past eight years to survive this legal onslaught is gone. Since filing for bankruptcy two and half years ago, he’s not earned any income and the money he receives has gone toward funding his legal defense. Providing financial security for a stay is not required and would not only be impossible but unjust as well.

What useful purpose would be served by posting security? It would not be security for the separate monetary judgment against Mr. Eyman.<sup>6</sup> A

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<sup>6</sup> As previously advised, the years of costly litigation drove Mr. Eyman into bankruptcy nearly three years ago (Case no. 18-14536-MLB, USBC WDW). So the monetary penalties imposed on Mr. Eyman by the trial court are automatically stayed. 11 USC

stay, which would simply maintain the prejudgment status quo ante, would not change the relative position of the parties. Nor would it diminish or prevent the State from obtaining its ultimate relief if the appeal is not successful. *Lund v. Idaho & W.N.R.R.*, 48 Wash. 453, 456, 93 P. 1071 (1908).

The prejudgment status quo between the State and Mr. Eyman has existed since 2002. No measurable harm to the public interest will result from keeping the status quo during the finite pendency of this appeal, particularly if Mr. Eyman's motion for direct review is granted.

Expeditious prosecution of the appeal on direct review weighs in favor of granting a stay.

It may be assumed that the appeal which realtor is prosecuting from the decree of the superior court will be heard before the lapse of any considerable period of time. We find no basis for holding that the public interest has been or will be jeopardized by the continuance of the status quo until this appeal is finally decided.

*State ex rel. Langlie v. Wright*, 35 Wn.2d 703, 710, 215 P.2d 407 (1950)

When balancing the equities, the sliding scale used by the Court favors Mr. Eyman. *Boeing Company v. Sierracin Corporation*, 43 Wn.App. 288, 291, 716 P.2d 956 (Div. 1 1986), and see *Shamley v. Olympia* where the

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§362.



Supreme Court, as is here, granted injunctive relief where no harm to opposing party was shown:

We do not decide that question at this time, nor do we express any opinion as to the merits of the controversy. We have inquired into it only to the extent necessary to determine whether it presents a justiciable issue. The question presented is one of first impression in our court, and we find that a debatable issue is presented by the appeal.

47 Wn.2d at 127

Finally, it bears repeating that 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*, 35 Wn.2d at 707. This includes those laboring under decrees that might be prohibitory, even in part. 35 Wn.2d at 708. The injunctions imposed on Mr. Eyman are mandatory, crushingly prohibitive, and arguably life-threatening.

Without a stay, Mr. Eyman, having been designated a continuing political committee, would need to find someone willing to serve as a treasurer to handle his personal finances and file monthly reports on same. And because it is unlawful for political committees to spend their money for personal use (RCW 42.17A.445), that treasurer would be legally prohibited from spending Mr. Eyman's own money for food, toiletries, medicine, rent, child support, college tuition, taxes, and other personal expenses (which begs the question: how can he live and support his family

without a stay?). And because the order legally prohibits Mr. Eyman from participating in the decision making for any political committee (Motion for Stay, Ex. A) without a stay, Mr. Eyman would be barred from managing, controlling, or directing his own money during the time his case is on appeal. That will be months, possibly years. And because his designation as a political committee is retroactive to 2012, without a stay, Mr. Eyman's treasurer (if he can find one willing to serve as a non-ministerial treasurer which arguably involves heightened personal liability) would need to file reports showing his and his family's personal transactions for the past eight years or risk additional daily fines. And if the higher courts eventually find that Mr. Eyman was not an organization and therefore could not be a continuing political committee, then those eight years of retroactive reports would already be in the public eye and the bell could not be unrung. But if the higher courts affirm this finding, then how will the public be harmed by seeing eight years of his family's personal transactions after the appeal but not before?

For these reasons and the numerous debatable issues listed here, Mr. Eyman respectfully requests a stay pending appeal on the restrictions on what he's allowed to say and the resulting chilling effect on his political activism while this case is on appeal. No harm to the public interest will result from maintaining the status quo pending appeal.

Respectfully submitted this 30th day of August 2021.

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