

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

MOTION TO MODIFY
SEPTEMBER 14, 2021
RULING DENYING STAY
PENDING APPEAL

I. IDENTITY OF MOVING PARTY

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

II. STATEMENT OF RELIEF SOUGHT

A. Mr. Eyman requests the Court enter an order modifying the Court's September 14, 2021, ruling denying a stay of non-monetary relief pending appeal,¹ and grant the stay as requested.

¹ 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. 11 USC §362

B. Your undersigned requests the Commissioner of this court be recused from further proceedings in this matter for apparent lack of impartiality. See Sec. 4, F(1), (3)

III. REFERENCE TO RELEVANT RECORD

A. Motion for Stay Pending Appeal

Exhibit A: Court's Findings of Fact and Conclusions of Law and Injunction (excerpts)

Exhibit B: Defendant's Motion for Partial Summary Judgment

Exhibit C: Defendant Eyman's Motion for Reconsideration

B. Respondent State of Washington Answer to Motion for Stay Pending Appeal

C. Reply of Appellant Tim Eyman on Motion for Stay Pending Appeal

D. Ruling denying Motion for Stay Pending Appeal (9/14/21)

IV. GROUNDS FOR RELIEF AND ARGUMENT

A. Trial Court grants unprecedented injunctive relief

In March 2017 the Attorney General (AG) initiated suit against Mr. Eyman claiming violations of the Fair Campaign

Practices Act (FCPA) RCW 42.17A associated with Initiatives 1185 and 517 filed in 2012. In February 2019 the AG added a claim Mr. Eyman was personally and individually a “continuing political committee” required to register with the state and report *all* financial transactions. Trial was in late 2020. The Court essentially granted all relief sought by the AG imposing an unprecedented fine of \$2,601,502.81² on Mr. Eyman individually. The Court also awarded fees and costs of \$2,891,666 based on a previously repealed statute.³ Moreover, without precedent, the Court characterized Mr. Eyman a “continuing political committee” requiring him to register as such, hire a treasurer, report all income and expenditures from any source for any purpose and not spend any of his own money raised for personal expenses.⁴ The Court, again without precedent, enjoined by prior restraint Mr. Eyman from actively

² This amount cannot be calculated based on the Findings on their face. Moreover the Court denied Mr. Eyman the opportunity to question much less object to the Findings contrary to CR 52(c).

³ In 2018 the legislature passed ESHB 2938, recodified most of RCW 42.17A..765(5) to RCW 42.27A.780 removing the prevailing party provision to only benefit the defendant and the Public Disclosure Commission, not the state.

⁴ See RCW 42.17A.445.

participating in the initiative and referendum process in multiple ways without basis in the FCPA⁵ and in facial violation of the First Amendment.

This case involves the unprecedented legal conclusion by the trial court that one who (1) seeks and receives charitable contributions to pay his *personal expenses*⁶ (not electoral campaign contributions or expenditures)⁷ is a “continuing political committee” although (2) not even an “organization,” (as required of a “continuing political committee”⁸). No other individual has ever been so labeled or so burdened.

Moreover, the trial court ordered expansive and draconian prior restraint injunctive relief prohibiting Mr. Eyman from

⁵ RCW 42.17A.750(1)(i) allows a court to enjoin any act *prohibited* by the FCPA and to compel the performance of any *required* by the FCPA; however, none of the acts here prohibited or mandated are derived from FCPA authority. See Findings pp. 30-32, Motion for Stay, **Exhibit A** He is even prohibited from self-employment.

⁶ That Mr. Eyman solicited charitable contributions for personal expenses rather than electoral campaigns is beyond dispute and the trial court did not find otherwise. Nor is there any claim sums so received were used in electoral campaigns rather than personal expenses.

⁷ Compare RCW 42.17A.005(40) which defines “political committee” as that which has the “expectation of receiving *contributions* or making expenditures *in support of*, or opposition to, any candidate or *any ballot measure*.” (italics added)

⁸ RCW 42.17A.005(4): “‘Continuing political committee’ means a political committee that is an *organization* of continuing existence not limited to participation in any particular election campaign or election cycle.” [italics added]

exercising fundamental First Amendment expressive and associational rights.⁹

A stay of enforcement is warranted while this decision is reviewed because the trial court imposed new and unprecedented legal restrictions on an individual and infringed deeply on Mr. Eyman and his supporters' First Amendment rights.

Based on the trial court's legal conclusion Mr. Eyman is a "continuing political committee", the court further concluded Mr. Eyman failed to comply with various reporting requirements of the FCPA going back eight or more years. Essentially these reporting requirements mandate every dollar received by Mr. Eyman for whatever purpose and all expenditures for whatever object (groceries, child support payments, anything) be reported by a treasurer—but not by Mr. Eyman who is barred by the court's injunction from being a treasurer for anyone, including himself. This in itself raises

⁹ Findings of Fact and Conclusions of Law and Injunction ("Findings"), entered February 10, 2021. [excerpts attached to original Motion for Stay as Exhibit A]

First Amendment concerns associated with the forced disclosure of anonymous donors.

The order characterizing Mr. Eyman as a “continuing political committee” is unique in the history of the FCPA. No other individual has ever been designated as such. Not here. Not anywhere. Not ever. Nor has anyone been designated a “political committee” for soliciting and accepting charitable contributions to defer his living expenses rather than electoral campaign expenditures.

The additional injunctive relief awarded the State of Washington was equally unprecedented. It amputates individual 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 if not associated with the committee). This includes prohibiting Mr. Eyman from (i) “acting” as a treasurer for a political committee, (ii) having authority for approving disclosure statements for any political committee, (iii) having authority to authorize expenditures for any 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 any political committee with respect to expenditures, (vii) having any financial decision-making authority for any 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 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 any 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” political contributors as to “why they should donate” to any political committee.

Mr. Eyman filed his Motion for Stay Pending Appeal on July 30, 2021. The Commissioner denied Mr. Eyman’s motion for stay on September 14, 2021. This objection to the

Commissioner's ruling and motion to modify the ruling follows. RAP 17.7

B. Liberal Standard to Grant Stay pending Appeal

Appellant requests the Court to modify the Commissioner's September 14, 2021 ruling denying a stay of non-monetary relief pending appeal. RAP 17.7. The criteria for a stay is generally set forth in RAP 8.1. Since this application does not involve property or money judgment, the court has jurisdiction to grant the stay upon "such terms are just." More specifically, the appellate court will consider (1) whether the moving party can demonstrate debatable issues on appeal; and (2) compare the injury to the moving party if a stay is not granted with the injury to the nonmoving party if it is.

C. Precedent Construing the Rule favors Stay

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 703, 707, 215 P.2d 407 (1950). 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. The Commissioner's ruling did not give any consideration to this controlling authority nor even cite it.

D. Questions of First Impression are “Debatable” as a Matter of Law

Questions of first impression are by definition “debatable”. *Shamley v. City of Olympia*, 47 Wn.2d 124, 127, 286 P.2d 702 (1955). 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.

But here there are many. In general, we must consider (1) the legal characterization of Mr. Eyman as a “continuing political committee” with resultant onerous substantive and reporting requirements and (2) injunctive prohibitions against

multiple free speech activities. Issues pertaining to injunctive orders of this kind are twofold: are they in excess of statutory authority, or if not, do they violate the First Amendment or State Constitution equivalent? Moreover, there is ample authority that seeking charitable contributions is protected by the First Amendment and statutes which impose unduly onerous reporting requirements on small organizations, let alone discrete individuals, are unconstitutional as applied.

E. FCPA must be strictly construed against the Government

The Commissioner neither discussed nor applied this constitutional cannon of construction.

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 arguably be more likely unconstitutional on its face or as applied. Proper statutory construction is relevant to statutory arguments which follow.

F. Characterizing Mr. Eyman as a “continuing political committee” is not only “debatable” but bizarre

There are three categories of debatable issues under this heading although the Commissioner only discussed the second: (1) does solicitation of charitable contributions to be spent on personal expenses, not electoral campaigns, constitute a “political committee;” (2) may a single individual be properly characterized as a “continuing political committee” if he is not an “organization”; and (3) if the statute properly construed

characterizes Mr. Eyman as a “continuing political committee,” is the statute as *applied* to Mr. Eyman unconstitutional because it (a) abridges the free speech right to seek charitable contributions; (b) violates the free speech right to keep donors and supporters anonymous; and/or (c) imposes unconstitutionally onerous reporting requirements?

1. Mr. Eyman does not meet the definition of a “political committee” because he does not seek, receive, or expend funds for an electoral campaign.

The Commissioner had nothing to say on this issue, nor can the AG adequately address it; however, it goes to the very heart of the FCPA—disclosure of *electoral campaign* financing of a ballot measure, not personal finances of an individual non-candidate.

What the Court did under this issue category is unprecedented in this state or anywhere. It was a total perversion of the FCPA and a blatant constitutional violation. As previously noted, reporting requirements are only imposed on “political committees” or “continuing political committees”

for *campaign* contributions and expenditures. *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.**”)¹⁰ A political committee files a statement of organization when it has the expectation of “receiving contributions or making expenditures *in any election campaign...*”. RCW 42.17A.205 [italics added] Mr. Eyman is not a campaign but a private citizen. He asked for private charitable donations for his family’s personal support, not for a campaign. Moreover, he is not an “organization,” which is the only entity which can constitute a “continuing political committee.”¹¹ Political committee registration requirements are subject to “exacting scrutiny.”¹² The only substantial public interest justifying any financial reporting for ballot measures is “voter education.”¹³ “They are,

¹⁰ (italics in original, bold added) .

¹¹ RCW 42.17A.005(14), *Utter v. Bldg. Indus. Ass’n of Wash.*, 182 Wn.2d 398, 417, 341 P.3d 953 (2015)

¹² *Utter, id.*, citing *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010) (citing *Citizens United*, 558 U.S. at 366-67, 130 S. Ct. 876)

¹³ *WIN v. Ripple*, 213 F.3d 1132, 1139 (9th Cir. 2000), *Brumsickle*, 624 F.3d at 1007.

by definition, campaign related.”¹⁴ Not only must there be direct electoral financing to be a “political committee,” but raising money to spend in an election must be a primary purpose of the organization.¹⁵ But the public has no voter education interest in charitable contributions to defray personal expenses. This is an attempt to shut Mr. Eyman down because he engages in personal issue advocacy, which is his unqualified constitutional right.¹⁶

The Commissioner asserts, “Mr. Eyman cannot tenably argue he was not a political committee at the relevant times.” Order p. 4 Thus the Commissioner has judged the ultimate issue in the case without benefit of record or briefing, and summarily so without hint of reason or authority. In fact all ballot measure campaigns were waged through a properly registered and reporting political committee. Rather Mr. Eyman sought and received charitable donations for his personal, not electoral,

¹⁴ *Buckley*, 424 U.S. at 79

¹⁵ *State v. Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508-09, 546 P.2d 75 (1976) See also *EFF v. WEA*, 111 Wn. App. 586, 599, 49 P.3d 894 (2002), *Brumsickle*, 624 F.3d at 997.

¹⁶ *Buckley*, *id.*

expenses. The Commissioner's claim is unfounded in fact and law, apparently based solely on predisposition.

2. Only an "organization" may be a "continuing political committee"

Two elements are necessary to characterize an entity a "continuing political committee": (1) it must fit the definition of a "political committee; and (2) it must be an "organization". RCW 42.17A.005(14) For the reasons set for above Mr. Eyman does not the fit the "political committee" definition; whereas he is an individual, not an "organization" by any plain meaning of the statute let alone a strict one. The Commissioner recognizes this may be "debatable" although he claims the argument is "less than compelling," giving the statute a "liberal" construction. Thus, the Commissioner not only rejects the constitutional mandate for a strict construction of a penal statute but also rejects its plain meaning.

3. The FCPA is unconstitutionally applied to Mr. Eyman to abridge his First Amendment Right to solicit charitable contributions

The Commissioner asserts: "Mr. Eyman's fleeting argument for the first time on appeal that he is the equivalent of a charitable organization is not well taken." Order p. 5 This, in the view of your undersigned, is an outrageous falsehood requiring recusal. It has absolutely no basis in the record save the dishonest assertion of Attorney General Robert Ferguson in his response to the stay: "For the first time, Eyman argues that he is a charity...Eyman never argued below that he was a charity..." Response p. 16 Moreover, it is absolutely contrary to the record which the Commissioner either did not read or willfully disregarded.

Appellant's Reply (p.6, n.4) expressly stated: "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" Moreover, contrary to the misrepresentation by the Commissioner and the Attorney General, Mr. Eyman never claimed he is a "charity" but rather

sought charitable assistance from others—precisely the opposite from claiming *himself* a “charity.” Charities give money, Mr. Eyman hopes to receive it. The Commissioner’s ruling makes short shrift of Mr. Eyman’s First Amendment rights by stating that Mr. Eyman is now making “for the first time on appeal” a “fleeting” claim to be a “charitable organization.” Ruling p. 5. This is not what Mr. Eyman is arguing nor is it fleeting or a first-time claim.¹⁷

The effect of characterizing appellant a “continuing political committee” and the injunctions is to hinder and prevent Mr. Eyman from constitutionally protected asking (“begging”) for personal financial support. Accordingly, under the injunctions, Mr. Eyman cannot even beg for and receive personal financial support without setting up a political committee required to (1) report same to the PDC and (2) make decisions without Mr.

¹⁷ This precise issue was raised and briefed in Mr. Eyman’s motion for reconsideration filed in the trial court on April 26, 2021. Accordingly, it is preserved for review. *Nail v. consolidated Resources Health Care Fund I*, 155 Wn.App. 227, 231-32, 229 P.3d 885 (2010); *Reitz v. Knight*, 62 Wn.App. 575, 581 n.4, 814 P.2d 1212 (1991); *Newcomer v. Masini*, 45 Wn.App. 284, 287, 724 P.2d 1122 (1986); *Brown v. Safeway*, 94 Wn.2d 359, 369, 617 P.2d 704 (1980). Moreover, violation of Mr. Eyman’s First Amendment rights was the subject of most every substantive pleading on the merits.

Eyman's participation as to how contributions may be spent.¹⁸ But it's even worse than this because (1) the only purpose of a political committee is to support candidates or ballot measures¹⁹ (Mr. Eyman is neither) and (2) contributions to a political committee cannot be used for personal purposes.²⁰ In other words, this is a Catch-22 that makes it impossible for Mr. Eyman to live as a human being unless he gets a W-2 job!

As stated in Mr. Eyman's trial court motion for reconsideration, Motion for Stay Pending Appeal, Ex. C, 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 injunctions specifically prohibit him from doing so: "Defendant Eyman shall not directly solicit contributions to himself or his family..."²¹

If Mr. Eyman is out in public and someone offers him \$20 for food, he must refuse it: "Any contributions must be made

¹⁸ Findings, fourth injunction, pp. 30-32.

¹⁹ RCW 42.17A.005(41).

²⁰ RCW 42.17A.445.

²¹ Findings, fourth injunction, subsection 9, p. 31.

directly to the political committee, not directly to Defendant Eyman.” *Id.* 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.

The Washington Supreme Court recognizes begging as protected First Amendment activity. “The First Amendment protects ‘charitable appeals for funds’ . . . including appeals in the form of begging or panhandling. . . .” *City of Lakewood v. Willis*, 186 Wn.2d 210, 217, 375 P.3d 1056 (2016) (citing *Schaumburg, Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999); *Loper v. N.Y. City Police Dep’t*, 999 F.2d 699, 704 (2d Cir. 1993)). The government bears the burden to justify its restrictions on such speech. *Willis*, 186 Wn.2d at 217 (citing *Collier v. City of Tacoma*, 121 Wn.2d 737, 753-59, 854 P.2d 1046 (1993)).

There Willis was convicted of begging in a restricted area. The ordinance in question defined begging as “asking for

money or goods as a charity, whether by words, bodily gestures, signs or other means.” 186 Wn.2d 214. Mr. Eyman does as much when asking friends and family for financial assistance.

The recent Division I decision in *State v. TVI, Inc., d/b/a Value Village* (No. 80915-6-I, 8/16/21) holding the Attorney General’s attempts to regulate charitable solicitations are subject to strict scrutiny lends even more force to the issue.

4. Forced Reporting of Donor identities Violates First Amendment

If Mr. Eyman is a “continuing political committee” he must disclosure the source of all donations from any person for any purpose. However the First Amendment is clear that such disclosure may only be compelled for campaign financing but not issue advocacy (or personal use.) “Compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) [citing *Gibson v. Florida Leg. Comm.*, 372 U.S. 539 (1963); *NAACP v.*

Button, 371 U.S. 415(1963); *Shelton v. Tucker*, U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516; *NAACP v. Alabama*, 357 U.S.449 (1958)]

Appellant has the First Amendment right to solicit and use charitable contributions without reporting to or seeking the permission of the government. *Americans for Prosperity v. Bonta*, 594 US __ (2021) Any such requirement is subject to strict or at least exacting scrutiny requiring a *compelling* interest with a remedy narrowly tailored to meet it. *Id.*

Forced reporting imperils the First Amendment right of group association “because it enhances ‘[e]ffective advocacy.’” *NAACP v. Alabama*, *supra* at 460 Forced reporting violates the right of anonymity: “Anonymity is a shield from the tyranny of the majority...Depriving individuals of this anonymity is, therefore, ‘a broad intrusion discouraging truthful, accurate speech by those unwilling to [disclosure their identities] and applying regardless of the character or strength of an

individual's anonymity.'" *WIN v. Ripple*, 213 F.3d 1132, 1137-38 (9th Cir. 2000)

Illustrative of the importance of anonymity is the AG's threat against intervenors that they would be assessed hundreds of thousands of dollars in attorney fees if they persisted in their claim that their constitutional rights were violated by the government in this very proceeding. See Ex. D145 See also Motion for Reconsideration of Order Granting Production of Eyman's Bank records Directly to the State Government, **attached as Ex. A.**

5. Even if justified by the FCPA, forcing a small organization, let alone a single individual, to submit to political committee reporting requirements is an unconstitutional application of the statute

On the heels of *Buckley*, the Supreme Court decided *Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986) (*MCLF*). This case arose under the Federal Election Campaign Act's (FECA) prohibition against corporate use of treasury funds to make an

expenditure “in connection with” any federal election and requiring any such expenditure be financed by voluntary contributions to a separate segregated fund. Applying strict scrutiny which demands a compelling governmental interest, the Court held this provision unconstitutional as applied to MCLF. *Id* at 256 The same result follows here.

The FECA incorporates extensive, and almost identical reporting requirements for “political committees” to those under our FCPA which the State argues should be imposed on Mr. Eyman. *MCLA* 479 U.S. at 253-254 These additional regulations may create a disincentive for such organizations to engage in political speech. Detailed recordkeeping and disclosure obligations along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. *Id*. Speaking of these reporting and organizational requirements, the Court observed “it would not be surprising if at least some groups decided that the contemplated political activity was simply not

worth it.” *Id.* 255 The court held: “The fact that the statute’s practical effect may be to discourage protected speech is sufficient to characterize Sec. 441b as an infringement on First Amendment activities.” *Id.* “When a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest.” *Ibid.* at 256 But the Court found no such compelling interest and noted “individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction.” *Ibid.* at 261 Here, the State has *no* interest in forcing Mr. Eyman to report people who helped him and his family much less his expenditures for the personal living expenses for him and his family.

This is analogous to the State’s claim that Mr. Eyman’s receipt of money from friends and supporters allows him to continue his political advocacy. Although MCLF was a small organization, Mr. Eyman, an unemployed single individual, is

much smaller. What would be an unconstitutionally onerous burden for MCLF is many more times onerous for Mr. Eyman.

State actors have been held liable under 42 USC 1983 for enforcing state statutes that onerously impose “political committee” reporting requirements. *See e.g., New Mexico Youth Organized v. Herrera*, No. CIV 08-1156 JCH/WDS (USDC New Mexico, August 3, 2009). Echoing the State’s action against Mr. Eyman, the Court opined “it is important to recognize the essential distinction between laws that require disclosure only of campaign-related contributions and expenditures and those, such as the statute at issue in this case, that require disclosure of every organizational contribution and expenditure.” But that is exactly the box in which the State would force Mr. Eyman — and would be equally unconstitutional.

G. Whether the injunctions violate the First Amendment, are vague and/or overbroad are at least debatable

On its face the multifaceted injunction curtails free speech by prior restraint. For example, it states “with respect to any fundraising activity, Defendant Eyman is enjoined from misleading contributors of potential donors directly or indirectly as to why they should donate to a political campaign.”²² This injunction echoes a much narrower provision of the FCPA which our court held facially unconstitutional in *State v. 119 Vote No! Committee*, 135 Wn.2d 618, 957 P.2d 691 (1998) prohibiting “false statements of material fact” published with actual malice. RCW 42.17A.530(1)(a) This court held the State’s burden was “well-nigh insurmountable” to justify this speech restriction. *Id.* at 624 But here the State attempts to accomplish by injunction that which it cannot do by statute.

Due process requires any person be given fair warning of prohibited conduct. *State v. Autrey*, 136 Wash.App. 460, 150 P.3d 580 (Div. 3, 2006). This standard applies to both civil and

²² Findings, first injunction, p. 30

criminal proceedings. *Mays v. State*, 116 Wash.App. 864, 68 P.3d 1114 (Div. 1, 2003). Likewise, due process requires that prohibitions not be so broadly drawn as to encompass protected activity. *Sinnott v. Skagit Valley College*, 49 Wash.App. 878, 746 P.2d 1213, rev. den. 110 Wash.2d 1010 (Div. 3, 1987).

Many of the words used in the injunction's restrictions are undefined by the FCPA and exceptionally broad. Every time Mr. Eyman opens his mouth he faces a potential contempt citation. 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 any political committee and not run afoul of this restriction.

This injunction commands "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.”²³ 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 the Culp campaign?

H. Balancing the Effects Support Granting a Stay

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.

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, 35 Wn.2d at 710.

²³ Findings, second injunction, p. 30.

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 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.

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, 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?).

V. CONCLUSION

For these reasons and the numerous debatable issues posed, Mr. Eyman respectfully requests the Court to modify the ruling of September 14, 2021, and enter a stay of non-monetary relief pending appeal. No harm to the public interest will result from maintaining the status quo pending appeal.

CERTIFICATE OF COMPLIANCE

I certify that this Motion to Modify contains 4,998 words, in compliance with RAP 18.17(b).

Respectfully submitted this 13th day October 2021.

GOODSTEIN LAW GROUP PLLC

By: s/Richard B. Sanders
Richard B. Sanders, WSBA # 2813
Carolyn A. Lake, WSBA # 13980
Counsel for Appellants

ROIL LAW FIRM, PLLC

By: s/Seth S. Goodstein
Seth S. Goodstein, WSBA #45091
Counsel for Appellants