

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

TIM EYMAN AND
TIM EYMAN WATCHDOG
FOR TAXPAYERS LLC,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

No. 56653-2

APPELLANT'S MOTION TO
FILE OVERLENGTH BRIEF

**I. NAME AND DESIGNATION OF PERSON FILING
MOTION**

Richard B. Sanders, attorney for Appellant Eyman, files
this motion.

II. STATEMENT OF RELIEF SOUGHT

Leave to file an overlength Brief

III. REFERENCE TO RECORD

Brief of Appellant Eyman

IV. STATEMENT OF GROUNDS FOR RELIEF SOUGHT

Appellant Eyman seeks court leave to file an overlength
Opening Brief which exceeds the recommended limitation of
12,000 words by about 25%. RAP 18.17(c)(2)

Your undersigned can only recall one prior occasion in his appellate career where he has sought permission to file an overlength brief and reluctantly does so only in unusual and compelling circumstances.

RAP 18.17(c) contemplates and recognizes on occasion the court may grant permission to exceed recommended word counts, and RAP 1.2(c) grants authority to waive the rules “in order to serve the ends of justice.”

In the case at bar a waiver or relaxation of the recommended word count limitation is justified by the size of the record, the length of the Findings of Fact and Conclusions of Law as well as the nature of the issues presented.

The record is voluminous. The Clerk’s Papers exceed 5,600 pages and the Report of Proceedings is over 1,200 pages. The Findings of Fact and Conclusions of Law and Injunction are thirty-two pages comprised of nearly a hundred numbered paragraphs plus a lengthy injunction. The length and breath of

the Findings alone make even an abbreviated discussion of errors assigned to the multiple findings daunting.

This case was filed in March of 2017 and has been fiercely litigated by our Attorney General. Over 350,000 pages were produced in discovery and multiple discovery motions. The court file contains over 1,500 pleadings.

The brief has omitted discussion of many significant issues for the sake of brevity. However, even limiting issue discussion to those essential for a dispositional appeal on the merits requires briefing in excess of the normal appeal. Many of the issues relate to matters of first impression in this jurisdiction, both statutory and constitutional which require reasonable briefing to properly inform the court.

The end result of the trial was a nearly \$6 million judgment against Appellant plus a multifaceted injunction. Earlier drafts of the proposed brief were reduced in length, and then reduced again to this essential minimum.

The interest of justice would be served by allowing this overlength brief under these circumstances.

I certify that this Motion contains 390 words, in compliance with RAP 18.17(b).

Respectfully submitted this 18th day of February 2022.

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

No. 56653-2

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

TIM EYMAN AND
TIM EYMAN WATCHDOG FOR TAXPAYERS LLC,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

OPENING BRIEF OF APPELLANTS EYMAN

Richard B. Sanders, WSBA # 2813
Carolyn A. Lake, WSBA # 13980
Goodstein Law Group PLLC
501 S G Street
Tacoma, WA 98405
Telephone: 253-779-4000
Email: rsanders@goodsteinlaw.com
clake@goodsteinlaw.com

Seth S. Goodstein, WSBA #45091
ROI Law Firm, PLLC
1302 N I St Ste C
Tacoma, WA 98403-2143
Email: sethg@roilawfirm.com

TABLE OF AUTHORITIES

CASES

<i>American Constitutional Law Foundation v. Meyer</i> , 120 F.3d 1092, 1103 (10 th Cir. 1997).....	84
<i>Americans for Prosperity v. Bonta</i> , 594 US __ (2021).....	84
<i>Atherton Condo Apartment Owners Ass’n Bd of Directors v. Blume Dev. Co.</i> , 115 Wn.2d 506, 799 P.2d 250 (1990).....	47
<i>Bates v. Little Rock</i> , 361 U.S. 516 (1960).....	83
<i>Bellingham v. Eiford Constr. Co.</i> , 10 Wn.App. 606, 608, 519 P.2d 1330, review denied, 84 Wn.2d 1002 (1974)	95
<i>Buckley v. American Constitutional Law Foundation (ACLF)</i> , 525 U.S. 182 (1999)	18, 20, 85
<i>Buckley v. Valeo</i> , 424 U.S. 1, 77-78, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)	48, 83
<i>Burnett v. Spokane Ambulance</i> , 131 Wn.2d 484, 494, 933 P.2d 1036 (1997)	70
<i>City of Lakewood v. Willis</i> , 186 Wn.2d 210, 217, 375 P.3d 1056 (2016)	82
<i>City of Seattle v. Long</i> , __ Wn.2d ___, 493 P.3d 94 (2021) ..	92
<i>Collier v. City of Tacoma</i> , 121 Wn.2d 737, 753-59, 854 P.2d 1046 (1993)	82
<i>DeLong v. Parmelee</i> , 157 Wn.App. 119, 236 P.3d 936 (2010)77	
<i>Federal Election Comm’n v. Massachusetts Citizens for Life</i> , 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986)....	85, 86
<i>Fjelstad v. Honda Motor Co. Inc.</i> , 762 F.2d 1334, 1342-43 (9 th Cir. 1985).....	73
<i>Gibson v. Florida Leg. Comm.</i> , 372 U.S. 539 (1963).....	83
<i>Human Life of Washington v. Brumsickle</i> , 624 F.3d 990, 997 (9 th Cir., 2010)	65, 66
<i>Leocal v. Ashcroft</i> , 541 U.S. 1, n.8, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004)	48
<i>Loper v. N.Y. City Police Dep’t</i> , 999 F.2d 699, 704 (2d Cir. 1993).....	82
<i>Mackey v. American Fashion Inst. Corp.</i> , 60 Wn.App. 426, 430, 804 P.2d 642 (1991).....	95

<i>Marina Condominium v. Stratford</i> , 161 Wn.App. 249, 261, 254 P.3d 827 (2011)	70
<i>Mays v. State</i> , 116 Wn.App. 864, 68 P.3d 1114 (2003).....	89
<i>Meyer v. Grant</i> , 486 U.S. 414 (1988)	18, 20
<i>NAACP v. Alabama</i> , 357 U.S.449 (1958)	83, 84
<i>NAACP v. Button</i> , 371 U.S. 415(1963).....	83
<i>New Mexico Youth Organized v. Herrera</i> , No. CIV 08-1156 JCH/WDS (USDC New Mexico, August 3, 2009).....	88
<i>Petersen v. Port of Seattle</i> , 94 Wn.2d 479, 487, 618 P.2d 67 (1980)	95
<i>Rivers v. Wash. State Conf. of Mason Contractors</i> , 145 Wn.2d 674, 694-96, 41 P.3d 1175(2002).....	70
<i>Schaumburg, Gresham v. Peterson</i> , 225 F.3d 899, 904 (7 th Cir. 2000).....	82
<i>Shelton v. Tucker</i> , 364 U.S. 479 (1960)	83
<i>Sinnott v. Skagit Valley College</i> , 49 Wn.App. 878, 746 P.2d 1213, rev. den. 110 Wash.2d 1010 (1987)	89
<i>Smith v. City of Fort Lauderdale</i> , 177 F.3d 954, 956 (11 th Cir. 1999).....	82
<i>Snedigar v. Hidderson</i> , 53 Wn.App. 476, 487, 768 P.2d 1 (1998)	70
<i>State ex rel Evergreen Freedom Foundation v. WEA</i> , 111 Wn.App. 586, 603, 49 P.3d 894 (2002) (<i>EFF</i>)	65, 66
<i>State v. (1972) Dan J. Evans Campaign Committee</i> , 86 Wn.2d 503, 508-09, 546 P.2d 75 (1976).....	65
<i>State v. 119 Vote No! Committee</i> , 135 Wn.2d 618, 957 P.2d 691 (1998)	89
<i>State v. Adams</i> , 163 Wn.2d 277, 284, 178 P.3d 1021 (2008) ..	47
<i>State v. Autrey</i> , 136 Wn.App. 460, 150 P.3d 580 (2006).....	89
<i>State v. Flores</i> , 164 Wn.2d 1, 17, 186 P.3d 1038 (2008).....	47
<i>State v. Grocery Manufacturers Association</i> , 195 Wn.2d 224, para. 39, 461 P.3d 334, 345 (2020)	63, 93
<i>State v. Grocery Manufacturers Association</i> , No. 99407-2, January 20, 2022.....	91, 94
<i>State v. TVI, Inc., d/b/a Value Village</i> , __ Wn.App.__, 493 P.3d 763 (2021)	82

<i>Sunnyside Valley Irr. Dist. V. Dickie</i> , 149 Wn.2d 873, 73 P.3d 369 (2003)	47
<i>Utter v. BIAW</i> , 182 Wn.2d 398, 416, 341 P.3d 953 (2015)	65
<i>WIN v. Ripple</i> , 213 F.3d 1132, 1137-38 (9 th Cir. 2000).....	84

STATE STATUTES

RCW 42.17A.001	3
RCW 42.17A.005(4)	24
RCW 42.17A.005(14)	20, 28, 29, 66
RCW 42.17A.005(15)	11
RCW 42.17A.005(22)	6
RCW 42.17A.005(40)	21, 24, 63
RCW 42.17A.005(41)	80
RCW 42.17A.205	24, 63
RCW 42.17A.210	55
RCW 42.17A.220	55
RCW 42.17A.225	28, 55
RCW 42.17A.235(3)	12
RCW 42.17A.240	11, 13, 16
RCW 42.17A.240(3)	11
RCW 42.17A.435	17, 18, 28, 54, 57
RCW 42.17A.445	54, 80
RCW 42.17A.530(1)(a).....	89
RCW 42.17A.600-715.....	5
RCW 42.17A.750(1)(i)	30, 74
RCW 42.17A.750(2)(c).....	47
RCW 42.17A.765(5)	95
RCW 42.17A.770	7, 27
RCW 42.17A.780.....	95, 96

FEDERAL STATUES

42 USC 1983	87
-------------------	----

OTHER AUTHORITIES

BLACK’S LAW DICTIONARY 1290 (Rev. 4 th ed.).....	92
Matthew 6:2-6:4 (N.R.S.V.).....	83

Moore’s Federal practice (3 rd ed.) sec. 37.50[2][c].....	73
Reporting of Campaign Contributions and Expenditures, 23 Vand. L. Rev. 293, p, 298	63
Webster’s New World Dictionary of the American Language 1033 (College ed. 1968).....	21

RULES

CR 30(b)(6)	71
CR 33(c)	73
CR 37.....	passim
CR 37 (b)(2)(A).....	29
CR 52(c)	45
RAP 1.2	48
RAP 18.1(b).....	96

UNITED STATES CONSTITUTIONAL PROVISIONS

First Amendment.....	passim
Eighth Amendment.....	92

WASHINGTON STATE CONSTITUTIONAL PROVISIONS

Art. 1, Sec. 5	29, 30
Art. 1, Sec. 7	29, 30, 83
Art. 1, Sec. 14	91

I. INTRODUCTION

A. Overview

The State sued Tim Eyman alleging violation of the Fair Campaign Practices Act (FCPA, RCW 42.17A). After a bench trial, Judge James Dixon awarded judgment against Mr. Eyman for \$2,601,502.81 in statutory penalties plus \$2,891,666.90 in costs and attorney fees.¹

This appeal challenges liability under the FCPA as a matter of law and, in the alternative, the award of penalties as unconstitutionally excessive, the award of attorney fees to the State without statutory authority, and injunctive relief in violation of the FCPA and the First Amendment.

This introduction focuses on the State's two theories of liability, the rejection of which should be dispositive of remaining issues.

The State asserts two essential claims against Mr. Eyman: (1) he failed to properly report financial transactions in 2012 regarding initiatives 1185 (2/3's vote to raise taxes) and

¹ CP 5306

517 (reforming the initiative process); and (2) failed to report charitable donations he solicited and received including and after 2012 to pay his personal expenses. Although the record is voluminous, the legal principles pertaining to these claims are rather simple and determinative in Mr. Eyman's favor.

B. Purpose of FCPA is not to require financial disclosure from officers of ballot measure committees

The legal question at the heart of this case is clear: does the Fair Campaign Practices Act require officers of a ballot measure campaign disclose their personal, as opposed to campaign, finances (as candidates and elected officials must do)? The answer is equally clear (and undisputed by the State), it does not.

The State would distract from this clear statutory issue and instead focus the Court on the complexities of Mr. Eyman: his personality, politics, history, financial relationships and transactions.

But the law must be the same for Tim Eyman as it is for Christian Sinderman. The legislature has never required non-

candidates to disclose their personal finances. It does not require political vendors of campaigns to disclose their finances nor to disclose financial transactions between campaign committee officers and vendors.

Why is this?

The preamble to the Fair Campaign Practices Act² sets forth the rationale that the purpose of FCPA is twofold: 1) require transparency for the personal finances of candidates and elected officials, so the public can know how those elected are financially supported, or entangled, with interests that may corrupt or influence them, and 2) require transparency in contributions to candidate and ballot measure campaigns. For the same reason, there are limits on the amount of money one can contribute to a candidate but there are no limits (they were found unconstitutional) on the amount that can be given to a ballot measure campaign as ballot measure campaigns are ideas and cannot be corrupted by large contributions.

² RCW 42.17A.001

There are no candidate campaigns at issue here. The two ballot measure campaigns were 1185 and 517. Mr. Eyman supported both measures and served as an officer of both campaigns.

The State convinced the lower Court that the 1185 campaign should have disclosed payments to a signature-gathering company as payments to Mr. Eyman. But there is no factual dispute that the company in question did what it was paid to do: qualify 1185 for the ballot. When the vendor chose to pay Mr. Eyman money at a later date, for whatever reason, this did not influence the issue/idea that was on the ballot. Vendor payments or gifts to campaign consultants and officers are a common if unseemly part of political campaigns in our state. If the legislature wished to regulate or prohibit the practice it could easily do so: by requiring that any financial transactions between campaign vendors and officers be disclosed and/or that the personal finances of campaign officers be disclosed. Indeed, there is an entire statutory and regulatory

regime targeting precisely this kind of behavior in the lobbying and financial disclosure provisions of the FCPA (RCW 42.17A.600-715). But the law clearly does not require this of either campaign officers or vendors as much as the State may wish it did.

The State has side-stepped this clear impediment to its claim by arguing that a later payment from a vendor to an officer of a campaign was actually an “expense” of the campaign and should have been reported as such, not by the vendor but by the campaign. But this type of financial transaction, payments from a vendor to a non-candidate officer of a campaign, is simply not a target of the FCPA under a plain reading of that statute. The FCPA is concerned with financing (i.e. contributions) and expenses to the extent that they may reveal violations of contribution limits (i.e. by artificially low pricing).

But examining the FCPA definition of “expenditure”,³ it would not require a distinct and separate additional disclosure of even an arguably inflated⁴ portion of a bill paid to a vendor as long as the vendor provided the service paid for and the full payment from the campaign was disclosed and did not remit or make payment to a candidate or elected official.

It is a truism of Washington state politics that many political vendors in both parties have extensive and perhaps unseemly financial relationships with campaigns they represent and the officers of those campaigns. This behavior may not be commendable but inarguably the plain language of the FCPA does not mention, target, nor prohibit it.

C. Initiative 1185 and 517 reporting claims invalid

These claims were first asserted in the State’s original complaint filed on March 31, 2017.⁵ Therefore, they are

³RCW 42.17A.005(22)

⁴ There is no regulation whatever under the FCPA of profit margins by vendors. Simply put, even if one accepts the lower court’s conclusion that the bill to the campaign was inflated this is not a violation of the FCPA so long as the actual amount paid is accurately reported as it was here.

⁵ CP 1

subject to the FCPA five- year statute of limitations⁶ which bars claims prior to March 31, 2012.

The claims are solely statutory, based entirely on the FCPA. As discussed above, when the purpose of the FCPA is considered, the claims are extraneous. Therefore, construction and application of the FCPA is central, absent some constitutional infirmity which need not be reached if the State's claims are not supported by the plain language of the statute in the context of its purpose.

A political committee was properly registered by treasurer Stan Long in early 2012 for I-1185.⁷ Mr. Eyman as well as father and son Mike and Jack Fagan were listed as officers in the committee which operated out of Spokane. Mr. Stan Long, CPA and former IRS auditor, was designated as the

⁶ RCW 42.17A.770

⁷ Ex. 145 are the PDC filings for I-1185. Many exhibits were admitted into evidence multiple times; although your undersigned attempts to identify each exhibit by its lowest number. Prior to trial the defense marked its proposed exhibits with the prefix "D" consecutively beginning with the number 1; however, on later instruction from the court renumbered the defense exhibits beginning at 501 et seq.

committee's treasurer, signing and timely submitting all required reports to the Public Disclosure Commission (PDC).⁸

The first task of the committee was to collect the necessary signatures for ballot access. This required around 300,000 signatures allowing for some margin of invalidity. The committee elected to hire a paid signature gathering firm, Citizen Solutions, LLC ("LLC" or "vendor") to collect those signatures before the July 6, 2012 deadline.

A written contract was negotiated between the committee and the vendor in April 2012 to attempt to obtain at least 300,000 signatures by the deadline for \$1,050,000.⁹ This equates to \$3.50 per signature. This contract was subsequently modified to increase the price to provide greater incentive to signature gatherers¹⁰ because of competition from other initiative signature gathering campaigns.¹¹ The vendor was in business to make a profit, and ultimately did.

⁸ RCW 42.17A.210, .235, .240

⁹ Exhibit 153

¹⁰ Exhibit 82, 83

¹¹ Exhibit 85., 87

The vendor did not hire signature gatherers directly but hired companies (subvendors) formed for that purpose which hired individuals to actually solicit signatures on the street. Subvendors bid an undisclosed contract price to the vendor per valid signature, which also allowed a profit to the subvendor.

Ultimately around 320,000 signatures were collected and turned in for a contract price of around \$1.25 million (\$3.89 per signature) and the initiative qualified for the ballot. There is no claim or evidence the final payment to Citizen Solutions was not for the contracted price as modified, and there is no claim it was not fair market value.¹²

Expenditures to Citizen Solutions from the 1185 committee were accurately reported by treasurer Stan Long in the proper amount as they occurred as payments to Citizen Solutions for signature gathering. He also reported the in-kind contributions from various business groups such as the

¹² RP (10/30/20) 5, 9

Association of Washington Business and others who paid Citizen Solutions directly.¹³

After the signature drive was complete Citizen Solutions entered into a consulting agreement with Mr. Eyman's LLC, Tim Eyman, Watchdog for Taxpayers, for \$308,000 for three years of Mr. Eyman promoting Citizen Solutions' services to potential customers.¹⁴ Citizen Solutions' payment was made from the profits it earned in the 1185 campaign. It was not reported to the PDC because reporting how a vendor spends its money is neither required nor permitted by the FCPA.¹⁵ However, the payment was reported to the State on B & O tax returns and IRS tax returns from Citizen Solutions and Mr. Eyman's LLC, and fully disclosed to the PDC upon inquiry.¹⁶

Subsequently, Mr. Eyman's LLC loaned a total of around \$200,000 in several installments to a national Virginia based

¹³ Exhibit 145. An inkind contribution of \$27,150 from Washington Beer and Wine Wholesalers was unintentionally omitted from Mr. Long's report as it was from the State's original complaint. CP 1

¹⁴ Exhibit 216

¹⁵ RP 485: Perkins testified neither campaign nor vendor need report payments from vendors.

¹⁶ See note 59

company, Citizens in Charge, which promoted initiatives in states across the nation. The principal of Citizens in Charge was Paul Jacob who was acquainted with Mr. Eyman. The loan was non-interest bearing and had no fixed date for repayment.¹⁷ Mr. Jacob had expressed support of I-517 and contemplated forming a political committee to support it; however ultimately concluded it would be cleaner and simpler to have Citizens in Charge expenditures supporting I-517 reported by the existing I-517 committee as “in-kind contributions.”¹⁸

The loan to Citizens in Charge was not reported to the PDC because the FCPA neither requires nor permits reporting the source of loaned funds potentially used to make a political donation.¹⁹ As admitted by the State, every credit card donation functions the same way.²⁰ Although Mr. Eyman and Mr. Jacob testified it was anticipated loaned funds would probably be used as in-kind donations to support I-517, Mr. Eyman testified he

¹⁷ Exhibit 201

¹⁸ Exhibit 160

¹⁹ Loans are not contributions. RCW 42.17A.005(15) If to a political committees they are reportable, RCW 42.17A.240(3); but not to donors.

²⁰ RP 338 Perkins testified

loaned the money to Citizens in Charge to build a business relationship with them and because he wanted the loan to be repaid²¹ and the 517 committee did not have the ability to repay such a loan.²² Mr. Eyman had previously loaned money to initiative committees he sponsored to his financial hardship and didn't want a repeat that experience.²³ He had no reason to conceal the loan to Citizens in Charge and fully disclosed it to the PDC upon inquiry, although not reportable.²⁴

After the loan, Citizens in Charge hired petitioners to collect signatures for 517. Those in-kind expenditures were properly reported by 517's treasurer, also Stan Long.²⁵ Citizens in Charge repaid over \$100,000 of the loan as the court so found²⁶ until Mr. Eyman filed bankruptcy in November 2018 listing Watchdog as an asset.

²¹ RP 783-784

²² RP 785

²³ Only loans to political committees, unlike individual donors, need be reported. RCW 42.17A.235(3)

²⁴ RP 790

²⁵ Exhibit 140

²⁶ Appendix A, Finding 3.5: "Eyman received \$103,000 in loan repayments"

Mr. Eyman helped Citizens in Charge repay this loan by asking his friends and supporters to donate money to Citizens in Charge and its affiliated Foundation in the realistic hope and expectation these donated funds would enable Citizens in Charge to repay the Watchdog loan.

Although expenditures²⁷ to Citizen Solutions for signature gathering services were timely and accurately reported by 1185 treasurer Stan Long, the State claims five of those payments to Citizens Solutions should have been reported instead as expenditures to Mr. Eyman.

Understanding the State's theory some payments to Citizen Solutions for the 1185 campaign (direct and in-kind) were misreported as payments to Citizen Solutions rather than Eyman himself is essential to its refutation. Its logic is hardly self-evident.

Without factual dispute treasurer Stan Long on behalf of the 1185 campaign accurately reported the amount of direct and

²⁷ RCW 42.17A.235, .240

in-kind payments to Citizen Solutions for the committee. Direct payments from the 1185 committee to Citizen Solutions were reported in small boxes on PDC forms as: “vendor” “Citizen Solutions” and “Purpose of Expense and/or Description” as “Signature Collection for 1185.”²⁸ In-kind payments to Citizen Solutions from third person business groups were reported: “Contributors Name and address” with the name of the contributor (e.g. Association of Washington Business) with the “Description of Contribution” as “pymt to citizen Solutions (I-1185)”²⁹

The State does not dispute payments were made to the vendor in the amounts and dates listed. However, the State claims five payments to Citizen Solutions after or just before it fully paid its subvendors should have been listed as payments to Mr. Eyman, not Citizen Solutions.³⁰ Trying to invent a

²⁸ See exhibit 145, e.g. Sch. A to C4, report date 06/01/12 7/16/12; see also C-4 7/17/12 Sch A. Mr. Perkins testified “signature gathering” would be the attributable “purpose.” RP 486

²⁹ Exhibit 145, e.g. Sch. B to C4, report date 6/1/12 7/16/12, See also C-4 5/1/12 to 5/31/12; Sch B to C-4 6/01/12 to 7/16/12

³⁰ See Finding 2.26, 2.31

reporting requirement for the \$308,000 payment to Mr. Eyman's LLC where none exists, the State identifies payments totaling \$350,000³¹ which it theorizes should have been reported as payments to Mr. Eyman although without dispute they were actually payments to Citizen Solutions and correctly reported as such. Your undersigned knows of no example, ever, in this state (or anywhere) where payments to a vendor are not reported as such regardless how the vendor may spend its own money.

The State's legal theory, however, is contrary to the statute in at least two respects: (1) only the treasurer of a political committee can report on behalf of the committee to the PDC (and Mr. Eyman was not the treasurer) and (2) direct and in-kind payments to Citizen Solutions for their signature gathering services were timely and accurately reported by treasurer Stan Long. The FCPA has no requirement or even

³¹ Exhibit 351

option for *anyone* to report how a vendor spends its own funds because such payments are beyond the scope of the statute.

The State's claim that funds paid the vendor after it paid (or had the money to pay) subvendors for the signatures should have been reported as payments to Mr. Eyman is contrary to the plain language and intent of the FCPA. The signature-gathering company was paid to gather signatures, which it did successfully, and all those payments were timely and accurately reported. The statute directs the recipient of the expenditure be disclosed,³² and that was Citizen Solutions. Paying Mr. Eyman rather than Citizen Solutions would have breached the committee's contract with the vendor by only paying the vendor \$895,000 when \$1.25 million was contractually due. And it ignores the reality that the vendor is entitled to the contracted price no matter how it expends those funds to subvendors, overhead or profit. Moreover, it would have violated the IRS

³² RCW 42.17A.235, .240

code by understating income to Citizens Solutions and ignoring taxable income received by Mr. Eyman's LLC.

In short, the vendor earned a profit from the I-1185 campaign and invested some of that profit to hire Mr. Eyman to promote his services to earn even more in the future. Profit margins are not regulated by the FCPA. How a vendor spends its profits is *not* reportable under the FCPA. The statute could have been written to require that, but it wasn't. And if the FCPA is to be rewritten, that is the job of the legislature, not the Attorney General nor the court.

Treasurer Stan Long correctly reported what was required to be reported and Mr. Eyman had no duty or even right to report anything.

D. State's "concealment" claims fail as a matter of law

Accordingly, the State's "concealment"³³ claims fail as a matter of law. The concealment provisions of the FCPA concern concealment of *contributions*, not the later distribution

³³ RCW 42.17A.435 No case has been located finding "concealment" absent a reporting violation.

of profits by campaign consultants or vendors. This is consistent with both the preamble to the FCPA and campaign finance case law dating back half a century concerning exacting scrutiny of campaign finance regulations. In *Buckley v. American Constitutional Law Foundation* (ACLF), 525 U.S. 182 (1999), the Court struck down a Colorado law requiring just that: information about who signature-gathering companies were paying after they were paid by the campaign. The *Buckley* Court cited *Meyer v. Grant*, 486 U.S. 414 (1988), for the proposition that the risk of quid pro quo corruption, while common in candidate elections, is not as great in ballot initiatives because there is no corrupting object present, especially at the time of petition.³⁴ The plain language of RCW 42.17A.435 prohibits misidentification of contributions and expenditures, it makes no mention of and does not concern itself with what vendors do with money once paid by a

³⁴ See *ACLF*, 525 U.S. at 203 (quoting *Meyer*, 486 U.S. at 427) (“The risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.”)

campaign. Mr. Eyman had no reporting responsibility--that duty falls exclusively on treasurer Stan Long who properly reported all contributors to the committee and expenditures to all vendors like Citizen Solutions. Reporting transactions by vendors *after* they are paid for signature gathering is both beyond the scope of the statute and constitutionally prohibited by black letter case law that is on point.

There could be no concealment of Citizen Solutions' payment to Mr. Eyman's LLC absent a reporting requirement, which there wasn't. And there could be no concealment of Mr. Eyman's loan to Citizens in Charge absent a reporting requirement that a potential in-kind donor borrowed money for a potential in-kind contribution. But there isn't. Nor was there concealment that Citizens in Charge made in-kind contributions to 517 as all of same were properly reported as such by treasurer Stan Long. Nor was there any proof Mr. Eyman had a motive to conceal such legal transactions. His sponsorship of these initiatives was public knowledge.

Political vendors and campaign officers are not required by the FCPA to disclose their personal finances as candidates are; there can be no concealment of that which the law does not even regulate, much less prohibit. To the extent the State asks the Court to interpret the FCPA in the ballot measure signature gathering context, it is constitutionally prohibited from doing so under *Buckley* and *Meyer*.

E. Mr. Eyman’s solicitation of donations to pay his personal expenses are not reportable because he is not a “continuing political committee”

This claim was added by the State in January 2019 as an amendment to its complaint.³⁵ A “‘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.”³⁶ Therefore two elements must be proved: (1) it is an “organization,” and (2) it meets the definition of a “political committee” which includes “having the expectation of

³⁵ CP 1057, 1059

³⁶ RCW 42.17A.005(14)

receiving *contributions* or making expenditures *in support of*, or opposition to, any candidate *or any ballot measure*.³⁷ (italics added)

First, obviously, Mr. Eyman is not an organization³⁸ but an individual. Second, the “contributions” claimed to fit the definition were to pay his personal living expenses, not for an electoral campaign.³⁹ Since the first proposition is self-evident, the remainder of this section discusses the latter. The facts are these.

Mr. Eyman received officer compensation for his ballot measure services through his initiative committees, as properly reported by his committees. Without dispute.

However, Mr. Eyman wanted additional financial support for him and his family. Accordingly, he asked his friends for charitable donations to help pay his personal expenses, and they

³⁷ RCW 42.17A.005(40)

³⁸ An organization is “a body of persons organized for some specific purpose, as a club, union or society.” Webster’s New World Dictionary of the American Language 1033 (College ed. 1968)

³⁹ Appendix C, Exhibit 119 is illustrative. There Mr. Eyman solicited donations for his personal expenses and separately sought donations to his campaign committee.

responded. The State claims he received over \$800,000⁴⁰ in such donations between 2012 and the 2020 trial and he reported none of it. The State claims Mr. Eyman spent all the money on his personal expenses and those of his family, and none of it on any electoral campaign.⁴¹ And that he reported none of the donations or expenditures to the PDC. *The State is correct.* None of this is subject to reporting under the Act if he is not a committee subject to reporting requirements.

The State's unprecedented theory is that these private donations enabled Mr. Eyman to live because they were used for groceries, shelter, children's expenses, health care, education for his kids, taxes and all the other necessary expenditures. And if he hadn't received these charitable donations, he would have to get a "real job" requiring him to spend time working for an employer rather than engaging in political activism such as wearing gorilla outfits,⁴² promoting

⁴⁰ Conclusion 3.15

⁴¹ CP1771

⁴² RP 705

his initiatives and political ideas, and speaking out in favor of them (and admittedly criticizing the Attorney General Ferguson as well).

The State also claims Mr. Eyman would try to motivate his friends and supporters to send him money for his personal expenses reminding them he had performed a valuable public service by promoting anti-tax initiatives to the benefit of private citizens (to the chagrin of his big government, big spending political enemies.) *This is also true.*

The problem with the State's bizarre claim is that the FCPA only requires reporting of *campaign* finance, not the personal finance of political activists like Mr. Eyman. To try to get around this clear limitation, the State contends Mr. Eyman's receipt of these charitable contributions to pay his personal expenses make him a "continuing political committee" which must report all contributions and expenditures. Although it is true that is the responsibility of a political committee, he does not meet the definition of a "continuing political committee" as

an organization “having the expectation of receiving *contributions* or making expenditures *in support of*, or in opposition to, any candidate or *any ballot measure*.” RCW 42.17A.005(40) Mr. Eyman is neither a candidate nor a “ballot measure”, i.e. “...any initiative...proposed to be submitted to the voters of the state...from and after the time when the proposition has been formally filed with the appropriate election officer...” RCW 42.17A.005(4)

As if the above definition is not enough, RCW 42.17A.205 limits a “political committee” to one which “has the expectation of receiving contributions or making expenditures in any *election campaign*.” [italics added]

Virtually every case addressing this topic links contributions and expenditures to an *election campaign*. No case here or in any jurisdiction, to the knowledge of your undersigned, has *ever* designated an individual raising money for his personal expenses a “political committee” subject to

reporting requirements. But that's the State's theory and the trial court's judgment. And the State's sticking to it.

This tree falls to the ground, root and branch, by its own weight. Mr. Eyman has *absolutely* complied with the statute. The State wants to rewrite it. This whole proceeding, without further discussion or detail, falls flat.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Errors Assigned

1. The trial court erred entering Finding 2.1 to 2.65.⁴³
2. The trial court erred entering Conclusion 3.1 to 3.25.
3. The trial court erred entering Finding V, Injunction.
4. The trial court erred entering an order for “Non-monetary Relief” on September 13, 2019 which characterized \$766,447 in charitable donations to Mr. Eyman for his personal

⁴³ Each identified Finding and Conclusion includes all its subparts. All Findings and Conclusions are attached as Appendix A. Further specific discussion of subparts is provided under headings entitled “Challenged Findings Regarding I-1185 and I-517” as well as “Challenged Findings Regarding Eyman as a ‘Continuing Political Committee’”

expenses as “political contributions,” and designated him as a “continuing political committee” subject to all reporting requirements of the FCPA, CP 1795, and further erred by refusing to reconsider and/or revise said order. CP 3090. 3246.

5. The trial court erred granting the State’s motion for Partial Summary Judgment characterizing \$766,447 in charitable donations to pay Eyman’s personal expenses as “political contributions” and characterizing him as a “continuing political committee,” CP 2852, and denying his motion to reconsider or revise same. CP 3090.

6. The trial court erred by awarding judgment to the State for penalties, injunction and attorney fees.

B. Issues

Issues pertaining to Findings and Statute of Limitations

1. Is the Finding of Fact supported by substantial evidence? Error 1.

2. Is the Finding of Fact in reality a Conclusion of Law subject to de novo review? Error 1.

3. Does RCW 42.17A.770's 5-year statute of limitations preclude the State from forcing the person it sues from to defend claims arising outside of the period of limitations? Error 1, 2.

Issues pertaining to reporting I-1185 and 517

4. Does an officer of a ballot measure political committee, who is not its treasurer, have a reporting duty under the FCPA? Error 2, 3, 4, 5.

5. If not, can he commit "concealment"? Error 2, 3, 4, 5.

6. Does the FCPA require the treasurer of a ballot measure political committee report how a signature gathering vendor expends its funds to third persons, subvendors, overhead, profit, compensation, or anything else? Error 2, 3, 4, 5.

7. Does the FCPA prohibit an officer of a political ballot measure committee from engaging in financial transactions with a vendor to the committee? Error 2, 3.

8. May an officer of a ballot measure political committee enter into a consulting agreement with a signature gathering vendor to the committee and/or receive a gift from the vendor without reporting obligation under the FCPA? Error 2, 3.

9. Does the FCPA require a political ballot measure committee report a loan to a potential in-kind donor to the committee? Error 2, 3.

10. Absent violation of a FCPA reporting requirement, may an individual commit “concealment” prohibited by RCW 42.17A.435? Error 1, 2, 3.

Issues pertaining to characterizing Mr. Eyman a “continuing political committee.”

11. Can a single individual be a “continuing political committee” under RCW 42.17A.005(14) and 225? Error 1, 2, 4, 5.

12. Can a person or entity who solicits charitable gifts to pay his personal living expenses, and expends them for just

that, be a “continuing political committee” under RCW 42.17A.005(14) and .225? Error 1, 2, 4, 5.

13. If the answer to the above is “yes,” does the FCPA as applied to Mr. Eyman violate the First Amendment to the United States Constitution and Art. 1, Sec. 5 and/or 7 of the Washington Constitution because it (1) abridges his First Amendment right to solicit and use charitable donations; (2) unconstitutionally requires him to disclose and identity of charitable donors; (3) subjects him to unconstitutionally oppressive reporting requirements and/or (4) renders the FCPA unconstitutionally vague and overbroad? Error 1, 2, 3, 4, 5.

Issues pertaining to discovery

14. As to the September 13, 2019 order for “Non-monetary relief” may the order:

(A) impose a remedy more than the least required to attain compliance;

(B) impose an erroneous conclusion of law;

(C) be entered under the authority of CR 37 (b)(2)(A) without an affirmative finding in the order supported by the

record the individual has the present ability to comply with the discovery order but willfully refuses to do so;

(D) without finding based on the factual record his failure to comply with the discovery order will be extremely prejudicial to the moving party's ability to prepare for trial; and/or

(E) impose a remedy which does not directly cure or mitigate the alleged discovery violation which prejudices the moving party, i.e., limit the remedy to the wrong? Error 1, 2 4, 5.

Issues pertaining to injunctive and monetary claims for relief

15. Does the injunction against Mr. Eyman exceed RCW 42.17A.750(1)(i) authorization to order what the FCPA requires and prohibit what it forbids? Error 3.

16. Does the injunction against Mr. Mr. Eyman violate the First Amendment to the United States Constitution and Art. 1, Sec. 5 and/or 7 of the Washington Constitution as overbroad,

vague, and substantively abridging rights of free speech including political advocacy, freedom of association and begging? Error 3, 4, 5, 6.

17. Is the State entitled to an award of reasonable attorney fees against Mr. Eyman under a prior *repealed* statutory entitlement? Error 2, 6.

18. Did the award of nearly \$6 million dollars in non-dischargeable penalties and attorney fees against destitute Eyman violate the excessive fines clause of the United States and Washington State Constitutions? Error 2, 6.

III. STATEMENT OF THE CASE

Mr. Tim Eyman is perhaps the most successful initiative proponent in this state's history, having promoted various initiatives on a variety of subjects since the late 90's.⁴⁴ He understands campaign finance reporting is required by the FCPA, which was itself adopted by initiative 276 in 1972. He endeavors to comply with all reporting requirements⁴⁵ and has

⁴⁴ RP 675

⁴⁵ RP 707

in fact done so with the single exception of a technical violation in 2002 to which he stipulated and settled for a fine and injunction against acting as a campaign treasurer in the future.⁴⁶

Since then, he has sought out and relied on the advice of professionals such as treasurer Stan Long, CPA and retired IRS auditor, tax attorney Robert McCallum and CPA Dave Hawthorne.⁴⁷ Since 2002 Mr. Eyman has sponsored numerous initiative campaigns, only two of which have resulted in citizen complaints, both of which were dismissed by the PDC.⁴⁸ However in the course of its investigation of the last complaint the PDC ultimately referred a complaint to the Attorney General for prosecution involving Initiatives 1185 and 517, both of which were sponsored by political committees Mr. Eyman helped form in 2012. Later that complaint was amended by the State in January 2019 to add a second claim Mr. Eyman was himself a “continuing political committee”

⁴⁶ RP 706, Exhibit 137

⁴⁷ RP 708-11, 726-7

⁴⁸ RP 706

because he solicited personal donations from his friends to help pay his personal expenses. The court held Mr. Eyman is legally mandated to register as a “continuing political committee,” designate a treasurer other than himself, establish a depository bank account and see to it that the treasurer reports all of his income from whatever source and expenditures for whatever purpose (except legal defense funds raised and expended.)

These two claims were generally summarized and outlined in the introduction.

By way of general background Mr. Eyman approaches initiative sponsorship by registering a political committee with his partner officers Jack and Mike Fagan, appointing a treasurer (CPA and former IRS auditor Stan Long), and typically contracting with a paid signature gathering firm to collect necessary signatures before the deadline. Periodic reports of campaign finance are required to be filed with the PDC by the treasurer, and as to initiatives 1185 and 517 reports were in fact timely filed by treasurer Long.

Facts regarding I-1185

In the case of 1185, the State claims the price for signatures negotiated by Mr. Eyman with the signature gathering company, Citizen Solutions, LLC, was “inflated” so as to provide a “kickback”⁴⁹ to Mr. Eyman after the signatures had been gathered in the form of a consulting agreement between Watchdog and Citizens for \$308,000. The State claims funds paid to Citizens by the 1185 committee, as well as in-kind business donors, should have been reported as payments to Mr. Eyman, not Citizen Solutions.

The fact is payments to Citizen Solutions for signature gathering were reported as exactly that by treasurer Long.

The facts also show the original contract with Citizen Solutions was increased by \$0.50 in May for remaining signatures, and again in June by \$1.50 as time was running out. Emails exchanged⁵⁰ justify the price increases as necessary to provide an additional incentive to signature gathers (hired by

⁴⁹ The FCPA does not define nor purport to regulate “kickbacks.”

⁵⁰ Exhibits 85, 87

subvendor companies) to collect necessary signatures for 1185 rather than leaving the state for other campaigns or exclusively working on a competing signature campaign highly funded by Bill Gates and others for charter schools. Mr. Eyman as well as William Agazarm testified in person or by deposition that the price hikes were justified by market conditions and had nothing to do with the subsequent consulting contract between Eyman and Citizen Solutions.⁵¹ There was no testimony to the contrary and the State claimed that the fair market value of the services rendered was “irrelevant.”⁵²

Mr. William Agazarm testified the \$308,000 payment to Watchdog for a consulting contract came from company profits.⁵³ There was no evidence to the contrary. The \$308,000 was not reported to the PDC (all concerned believing there was no such reporting requirement) however it was reported to the state in the form of a B & O tax return and the federal

⁵¹ CP 3725, 4027

⁵² CP 3459, RP (10/30/20) 5, 9

⁵³ CP 3701

government in IRS returns listing it was an expense of Citizens and income to Watchdog/Eyman⁵⁴.

Mr. Tony Perkins on behalf of the PDC interviewed Mr. Eyman on July 11, 2014 about the \$308,000 payment from Citizens Solutions to him and testified Mr. Eyman was quite “open about it” at the time.⁵⁵ He also testified the FCPA does not prohibit a vendor from hiring a consultant.⁵⁶ Moreover, it was freely and fully disclosed to the PDC by Mr. Eyman.⁵⁷

Facts regarding I-517

After receipt of the \$308,000, Watchdog loaned \$200,000 to a Virginia based company, Citizens in Charge, which had an interest in making in-kind donations to another pending initiative, 517, which would greatly liberalize signature gathering.⁵⁸ This was described in the introduction.

The State claims the loan to Citizens in Charge by Watchdog was unlawful “concealment” of a donation to the 517

⁵⁴ CP 3752

⁵⁵ RP 334

⁵⁶ RP 335

⁵⁷ RP 781-782

⁵⁸ RP 696-97

campaign by Eyman; however Eyman offered uncontradicted proof the \$200,000 was loaned to Citizens in Charge and that over \$100,000 of the loan was actually repaid prior to his bankruptcy. All of the in-kind payments by Citizens in Charge to signature gatherers for the 517 campaign were reported by 517 treasurer Stan Long as in-kind contributions. The State also acknowledges the transaction as described was freely disclosed by Mr. Eyman to the PDC investigator, Tony Perkins, when asked.⁵⁹

Eyman solicits charitable donations for his personal expenses

This topic was addressed in the introduction. Mr. Eyman sought charitable donations from his friends to pay his personal expenses. He relied on professional advice the donations were not reportable.⁶⁰ The solicitations were generally in writing⁶¹ and made clear he was seeking money to spend on his personal expenses, not any electoral campaign. And the facts show that

⁵⁹ Exhibits 141, 142, 144, 89; RP 81-87, 89-96

⁶⁰ RP 744-47

⁶¹ See e.g. Appendix C

is exactly what he did. He offered refunds to anyone who thought they were donating to a campaign; however no one did.⁶² As explained in the introduction the State claims this makes Mr. Eyman a “continuing political committee” required to report every single receipt/expenditure.

Discovery Issues

Aside from the State’s legal theory on reporting charitable donations for personal living expenses; discovery about this is an issue in itself, primarily the court’s September 13, 2019 order for “Non-monetary Relief.”⁶³

Throughout this litigation up to that point the State had inundated Mr. Eyman with multiple discovery demands including many sets of interrogatories, requests for production of documents, depositions, etc. The discovery took on a life of its own and included multiple questions regarding virtually every financial transaction of Mr. Eyman, his LLC, his political committees, friends, family and supporters since 2002. Judge

⁶² RP 724, 726 Four checks made out to a campaign committee and inadvertently deposited in Mr. Eyman’s personal account were refunded, or attempted to be. CP 2847

⁶³ CP 1795

Dixon even appointed a special master, retired Judge Gary Tabor, to deal with it. Judge Tabor described the discovery as “overwhelming.”⁶⁴ The Klinedinst firm billed Mr. Eyman tens of thousands of dollars in an effort to meet the State’s demands. The Attorney General assigned a full time investigator to the discovery project, Tony Perkins, formerly an investigator for the PDC.

While represented the court held Eyman in contempt for discovery violations and fined him \$250 per day⁶⁵, later increasing it to \$500 on September 7, 2018.⁶⁶ These orders and supporting pleadings were silent on Mr. Eyman’s ability to comply with outstanding discovery demands pro se.⁶⁷

By November 2018 Mr. Eyman was overwhelmed and filed bankruptcy shortly after receiving his lawyer’s latest bill for nearly \$100,000.⁶⁸ Although by then Klinedinst had managed to purge contempt in November before Judge Tabor, it

⁶⁴ CP 1660

⁶⁵ CP 196

⁶⁶ CP 5692

⁶⁷ CP 3252-3254

⁶⁸ CP 3254

withdrew from Eyman's representation because of the conflict caused by becoming bankruptcy creditors.

Eyman sought legal representation post-bankruptcy from attorney Joel Ard through appointment by the bankruptcy court. The State objected claiming Ard, as a sole practitioner, was incapable of keeping up with the State's massive discovery demands.⁶⁹ The State set fifteen depositions within a two-week period⁷⁰ to prove its point without any effort to coordinate with Ard, and then objected to the bankruptcy court when he tried to get paid.⁷¹ Ard withdrew stating no lawyer would represent Mr. Eyman under these circumstances.

Pro se, Mr. Eyman literally gave up in January 2019 moving the court to hold him in default because he simply could not cope with the State's discovery demands. He broke down at the hearing⁷² as the State pressed its demands that it depose Karen, his wife (who had no involvement in any of this

⁶⁹ CP 3266, 3380

⁷⁰ CP 5578

⁷¹ CP 5575

⁷² CP 3423, 3388-89

other trying to raise their adopted children in the family home.) The State opposed the default and the court denied the motion. This forced Eyman to proceed pro se, unable to complete discovery and accumulating fines at \$500 per day. He unsuccessfully moved several times to purge contempt but could never fulfill the State's demands.

By September 2019 the State had other plans. It brought a motion for "Non-monetary relief" seeking a court order under CR 37 as *a discovery sanction* establishing Mr. Eyman had pocketed over \$766,497 in "political contributions,"⁷³ i.e. charitable donations from his friends to help pay his personal expenses, and designating him as a "continuing political committee." The motion was supported by a declaration from investigator Perkins⁷⁴ swearing the State was gravely and irreparably prejudiced in trial preparation because Eyman had withheld donor identities⁷⁵ and repeated the claim in the State's

⁷³ CP 1174

⁷⁴ CP 1191

⁷⁵ CP 1197

motion as well.⁷⁶ Asking no questions and receiving virtually no relevant argument from pro se Eyman at the September 13 hearing⁷⁷, the court signed the order as proposed by the State.⁷⁸

Eyman moved for reconsideration attaching releases⁷⁹ allowing the State to access all of his bank accounts. Without comment the court denied his motion for reconsideration.⁸⁰

On October 17, 2019 your undersigned filed his notice of appearance after appointment by the bankruptcy court to represent the Eyman bankruptcy estate.⁸¹ The next day, October 18, the State served your undersigned with over 500 pages of summary judgment materials to do exactly what the September 13 order had contemplated.⁸²

Unbeknownst to your undersigned at that time, the State already had all the cancelled checks for the \$766,000 in donations for at least a year containing the name, address, date

⁷⁶ CP 1187-88

⁷⁷ RP 9/13/2019 p. 16 (doesn't know what CR 37 is)

⁷⁸ CP 1795

⁷⁹ CP 1799

⁸⁰ CP 2190

⁸¹ CP 2472

⁸² CP 2191

and amount of each donation—the lack of which was claimed to irreparable prejudice its trial preparation. At the same time, in secret and without any notice to your undersigned, the State subpoenaed Eyman’s bank accounts again, using the releases he had afforded the State in his (denied) motion to reconsider the September 13 order. Your undersigned had no knowledge of this subpoena until *two years later* when produced by the State on his demand.⁸³

In February 2020 the court granted Partial Summary Judgment⁸⁴ based on the discovery order over the objection and detailed resistance of your undersigned, and thereafter denied multiple motions to reconsider the summary judgment and revise the September 13 order.⁸⁵

By mid May 2020 the office of your undersigned finally completed discovery with the aid of a commercial grade computer, a feat far beyond the ability of most lawyers,

⁸³ CP 5674

⁸⁴ CP 2852

⁸⁵ CP 3090

certainly your undersigned.⁸⁶ Notwithstanding the court would not revise the September 13 order even though the trial date was in November and there was no basis to even *claim* the State had been prejudiced in its trial preparation.⁸⁷

Leading up to trial, the court refused exhibits offered by Mr. Eyman relating to penalties in other PDC cases and refused to accept into evidence⁸⁸ a threatening letter from the Attorney General directed to citizens who had intervened in a vain effort to protect their First Amendment privacy right to anonymously make charitable donations to Mr. Eyman to help defray his personal expenses.

The trial commenced in November 2020 and concluded in January 2021 with interim continuances. During the course of the trial Mr. Eyman tried to introduce evidence of his inability to pay any judgment in the amount sought by the State; however, the court refused to hear the testimony at the trial's

⁸⁶ CP 3261 This required optical scan of thousands of pages of discovery, 196 billable hours of attorney time and at least 60 hours of staff time.

⁸⁷ CP 3246

⁸⁸ Exhibit 645

conclusion.⁸⁹ The court did not announce its decision but rather asked both sides to offer proposed Findings and Conclusions. Both sides complied.

On February 10 the court held a hearing to announce its decision and without prior notice entered Findings as submitted by the State. This included lengthy and detailed injunctions far removed from that which the FCPA allows.

The court afforded Eyman no opportunity to comment much less object as contemplated by CR 52(c). Unlike most judicial proceedings where litigants prepare and submit proposed Findings and Conclusions which conform to the trial court's prior ruling, here there was no prior ruling or even hint from the trial court of who prevailed.

Moreover, although the court had previously invited Mr. Eyman to resubmit evidence of PDC penalties if liability went against him,⁹⁰ he was afforded no such opportunity to actually

⁸⁹ RP 909

⁹⁰ RP (11/13/20) 31

do so.⁹¹ If the entered Findings and Conclusions read like a hyperbolic press release and fundraiser, that's because that is exactly how they were used by Attorney General Robert Ferguson.⁹²

Two months later the State proposed its judgment awarding the State over \$2.5 million in penalties and like amount in “reasonable” attorney fees (at approximately four times the rate these attorneys and investigator were actually paid.)⁹³

This appeal follows.

IV. ARGUMENT

The introduction attempts to summarize the two main claims of the State whereas this section discusses other assignments of error as well.

⁹¹ CP 1073

⁹² CP 5667

⁹³ CP 3110

A. Standard of Review and Canon of Strict Statutory Construction

Findings of Fact are reviewed for substantial evidence⁹⁴ whereas Conclusions of Law even when misnomered as factual findings are reviewed de novo.⁹⁵

Facts asserted in summary judgment motions are construed most favorably to the nonmoving party.⁹⁶

As the foundation of this proceeding is the FCPA, proper construction of the Act is of paramount importance. The FCPA is a penal statute with class C felony penalties. RCW 42.17A.750(2)(c) 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*, 541 U.S. 1, n.8, 125 S.Ct. 377, 160 L.Ed.2d 271

⁹⁴ *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 73 P.3d 369 (2003)

⁹⁵ *Id.*

⁹⁶ *Atherton Condo Apartment Owners Ass'n Bd of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 799 P.2d 250 (1990)

(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 more likely be unconstitutional on its face or as applied. Proper statutory construction is relevant to the arguments which follow.⁹⁷

B. Challenged Findings Regarding I-1185 and I-517

The court must take notice the very volume and format of the Court's Findings is designed to evade review by its length and breath. The Attorney General drafted the Findings in this manner making certain no appellant brief could treat them in specific individual detail within anything close to court required page limitations. Notwithstanding the court is directed to RAP 1.2 to construe these rules liberally to promote justice and facilitate the decision on the merits. As set forth in the introduction, the State's two basic claims may be addressed

⁹⁷ In the context of Eyman's motion for stay, the state did not reject the rule of lenity but claimed it does not apply here because the FCPA "is not ambiguous." State's Response to Motion to Modify Ruling Denying Stay [11/2/2021] p. 21 n.5

directly based on a few succinct legal principles set forth in the FCPA, which is the thrust of this brief. Discussion of some sub paragraphs follow.

2.18 contains legal conclusions subject to de novo review such as asserting a “conspiracy to fund a kickback to himself” and draws conclusionary inference from various factual assertions.

2.19 without substantial evidence asserts Mr. Eyman falsely encouraged donations to the signature drive to gain ballot access.

2.20 asserts a legal conclusion that Mr. Eyman instructed others to disregard disclosure deadlines.

2.22 and .23 asserts legal conclusions and without substantial evidence that he already had an agreement to return \$170,000 in a “kickback.”

2.24 asserts legal conclusions and asserts \$270k” was an agreed payment without support by substantial evidence.

2.25 is a conclusion that all money paid to Citizen Solutions would be “used exclusively to fund signature gathering for I-1185” without support by substantial evidence if one is to interpret the findings as ruling out the use of funds by Citizen Solutions for anything other than paying for signature gathering on the ground, such as other overhead and profits.

2.26 reasserts the legal conclusion of “kickback” and is not supported by substantial evidence.

2.27 without substantial evidence and as a legal conclusion asserts Mr. Eyman intentionally concealed an in-kind contribution for a “kickback.”

2.28 is a legal conclusion and without substantial evidence.

2.30 asserts without substantial evidence and as a legal conclusion that receipt of funds from donors to Citizen Solutions was with intent to violate the FCPA, or was in violation of the FCPA at all, or that there was any legal duty under the FCPA to report the payment of \$308,000 to

Watchdog and that the “kickback” was funded by five expenditures, all properly reported payments to Citizen Solutions.

2.33 alleges facts outside the statute of limitations as well as legal conclusions such as “scheme” etc.

2.34 is a blatant legal conclusion that Eyman “failed to properly report and intentionally concealed” the purpose of the \$308,000 payment, and is without substantial evidence as well.

2.35 is a legal conclusion without support by substantial evidence alleging “concealment” of a \$308,000 payment to Watchdog which was not reportable under the FCPA and not subject to any regulation by the Act.

2.36 alleges events outside the statute of limitations and is filled with legal conclusions and unsupported factual allegations.

2.37 alleges facts outside the statute of limitations and asserts legal conclusions.

2.38 asserts facts not based on substantial evidence and conclusions of law.

2.39 asserts legal conclusions and facts not supported by substantial evidence. Loans to potential donors are not subject to disclosure by the FCPA and could not be concealed.

2.40 contains factual allegations not supported by substantial evidence, e.g. Mr. Eyman encouraged third persons to contribute to the 517 campaign by donating to Citizens in Charge to enable it to repay a prior loan to Mr. Eyman.

2.41 asserts facts not supported by substantial evidence and legal conclusions that monies paid to Citizens in Charge were really “contributions to the I-517 campaign” when there is no substantial evidence that the payments were anything other than what they purported to be.

2.42 is a legal conclusion on its fact and asserts facts not supported by substantial evidence.

2.43 asserts legal conclusions and facts not supported by substantial evidence.

2.44 asserts legal conclusions and facts not supported by substantial evidence. A loan to a potential donor to a campaign is not subject to reporting under the Act. Moreover it is an incorrect legal conclusion that an officer, but non-treasurer of a political campaign, can report anything under the Act.

2.45 Alleges legal conclusions and facts not supported by substantial evidence.

C. FCPA not violated by I-1185 and I-517 reporting

The State's First Amended Complaint alleges a "2012-2013 Illegal Scheme" whereby Citizen Solutions paid Mr. Eyman \$308,185 on July 11, 2012 not reported to the PDC from funds previously paid to the LLC. Para. 4.33 It alleged Mr. Eyman paid⁹⁸ \$200,000 to Citizens in Charge and spent the rest on himself for "personal living expenses." Para. 4.35 The State claimed Mr. Eyman understood the money to Citizens in Charge would be used to gather signatures for 517 and that was reported by the 517 committee as in-kind contributions. Para.

⁹⁸The trial court held "Payment may be in the form of a loan." RP 180 .

4.38 The State claimed this was “concealment” prohibited by RCW 42.17A.435 and that he improperly used the money, or some of it, for his personal use contrary to RCW 42.17A.445 and that he caused inaccurate reports to be filed regarding the above. Para. 5.3

The facts proven show Mr. Eyman was an officer but not the treasurer of either campaign committee. They show that all money paid Citizen Solutions, LLC was reported with the possible exception of one in-kind contribution of \$27,150 made directly to LLC from the Washington Beer and Wine Wholesalers without the knowledge of the treasurer of the 1185 committee, Stan Long.

The facts show the \$308,000 payment was for a consulting contract whereby Mr. Eyman contracted to promote Citizen Solutions sales for 3 years and came from vendor profits attributed to the 1185 campaign and was not reported to the PDC.

The facts show Watchdog loaned \$200,000 to Citizens in Charge and that Citizens in Charge spent about \$182,000 hiring signature gathers for 517, and this was reported by the 517 committee treasurer Stan Long as an inkind expenditure, but the loan was not reported.

The facts show over \$100,000 of the loan was repaid to Watchdog before Eyman went bankrupt in November 2018.

The facts as set forth above do not constitute a violation of the FCPA:

1. Only a committee treasurer has a reporting duty, not an officer. And Stan Long, not Tim Eyman was the treasurer.
RCW 42.17A.210, .220, .225,.235
2. The treasurer reported all payments to Citizen Solutions for signature gathering which was accurate.
3. The FCPA does not regulate the terms of a contract between a campaign committee and a vendor such as Citizen Solutions, and the State does not claim the prices paid were not fair market value in any event.

4. How a vendor spends its money, e.g. to signature companies' subvendors, overhead, profit, etc., are not reportable under the Act.
5. The FCPA does not regulate much less prohibit financial dealing between a committee officer and a vendor, nor require it be reported.
6. The vendor may spend its money however it wants, i.e. it is not property of the political committee once paid but that of the vendor.
7. A person receiving a payment from the vendor need not report it and can use it as he sees fit, even if it is a gift or a "kickback."
8. A person may loan his money as he sees fit. Even if the money is loaned to a potential donor it is not reportable under the FCPA.
9. Any person may make an in-kind expenditure to a political campaign without reporting it; however it is the responsibility

of the campaign treasurer to report same as an in-kind expenditure.

10. Failure to report something which the FCPA does not require be reported is not “concealment” prohibited by RCW 42.17A.435.

Therefore this claim against Mr. Eyman must be dismissed and the judgment of the trial court reversed.

Claim that Mr. Eyman is by definition a “Continuing Political Committee”

D. Challenged Findings Regarding Eyman as a “Continuing Political Committee”

2.46 contains conclusions of law and facts not supported by substantial evidence, i.e. “concealed” payments where there is no duty to report and “cast as compensation” when in reality a charitable donation for personal use is not a campaign contribution, or a loan repayment.

2.51 is misleading as Mr. Eyman did not assert any 5th Amendment privilege once the court disallowed it.

2.53 no substantial evidence that donations at issue were used by Eyman rather refunded or offered to be refunded.

2.54 no substantial evidence that Mr. Eyman seeks “compensation for his political work” other than that reported but rather no substantial evidence charitable donations were sought except to pay his personal expenses.

2.55 The order of September 13 is a legal conclusion, not a fact, and is an assigned error.

2.56 No substantial evidence donations for Mr. Eyman’s personal expenses were “contributions” in support of ballot measures and the whole “Finding” is an erroneous legal conclusion.

2.57 This is an erroneous legal conclusion.

2.58 Lacks substantial evidence and is a legal conclusion and there is no evidence any charitable donation received by Mr. Eyman was ever used in a ballot measure campaign.

2.59 This finding lacks substantial evidence and is contrary to the evidence. It is an erroneous legal conclusion that PDC staff

had the lawful authority to “instruct” Mr. Eyman to do anything, nor could they offer legal opinion or practice law without a license.

E. Solicitating charitable donations to pay personal expenses (not electoral campaign expenses) does not make one a “continuing political committee”

These facts were previously summarized. Essentially Mr. Eyman sought and received charitable donations to pay his personal expenses from friends and potential donors. None of the money was actually spent on a political campaign of any nature. No case anytime, anywhere has ever characterized a person or entity engaging in this conduct as a “political committee” required to report donations or expenditures.

The trial court findings in this regard are often conclusory and crafted to obfuscate the simple facts stated above. For example Finding 2.46 states “The payments were cast as compensation to Defendant Eyman for his work on initiative campaigns...He made all of these solicitations with the expectation of receiving funds to further his work on ballot propositions.” Of course, a donor may have been motivated by

Mr. Eyman's prior work on initiative campaigns as a political activist and servant in the cause of limited government, but there is really no dispute that all solicitations of this kind were expressly couched in terms that that donation was to be used for his personal expenses and not for any electoral campaign, and none were.

In context when the State says "to further his work on ballot propositions," it means if he cannot can live, pay for groceries, pay his mortgage, pay for health care, support his family, or pay his taxes he probably will not have the time or resources to engage in any political activism such as speaking, writing, wearing gorilla outfits to promote a political cause etc., none of which is *campaign* finance.

Most of the solicitations were in writing and make their purpose crystal clear, i.e. he would use the money for his personal expenses. On occasion he would send out a fundraiser telling the potential donor if he wanted to contribute to a ballot measure make the check payable to the campaign committee

but if for Mr. Eyman's personal use pay him directly. See e.g. Exhibit 119, Appendix C, CP 2226

The central legal error in the State's theory is it attempts to couple *campaign* finance for a ballot measure with the *personal* finance of a political activist. The FCPA speaks to the former, not the latter. The statute and case law are clear in this regard.

The State's theory seems to date back to August of 2002 in the form of a letter from PDC staff member Paul Stutzman. Mr. Stutzman is neither a lawyer nor a CPA. His letter was neither legal advice nor an order on behalf of the PDC.⁹⁹ In his letter to Mr. Eyman of August 11, 2002¹⁰⁰ he backhandedly expressed the completely unsupported view if Mr. Eyman sought financial support "solely for the purpose of paying legal expenses and *not to pay you or your family's personal expenses, the payment of which will enable you to spend time*

⁹⁹ RP 463-64 Mr. Perkins testified it was reasonable for Mr. Eyman to seek independent legal counsel, which he did.

¹⁰⁰ Exhibit 178

assisting or promoting ballot measure campaigns... then those monies raised and spent for legal expense purposes are not reportable..." [italics added] At the time the money raised was for legal expenses and the matter was not taken further; however his clearly expressed view that payment of personal expenses was reportable under the act seems to have germinated into the State's theory underpinning this litigation, *See e.g.* Finding 2.3. According to trial testimony from PDC investigator and AG employee Tony Perkins, no legal analysis backs this up nor did the State call a witness to defend it.

The lynchpin of the State's argument is that contributions for one's personal expenses renders the individual a "political committee" or in this case "continuing political committee" required to report *all* contributions and expenditures in perpetuity. This is inconsistent with the very definition of a "political committee" which requires "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) It is also inconsistent with RCW 42.17A.205 which limits a “political committee” to one which “has the expectation of receiving contributions or making expenditures in an *election campaign*,” [italics added] not to mention a “continuing” political committee can only be an “organization.”

“‘Contributions’ are determined by the contributor’s purpose ‘at the time of the contributions based on what they knew (or should have known) would be done with the money.’” *State v. Grocery Manufacturers Association*, 195 Wn.2d 224, para. 39, 461 P.3d 334, 345 (2020)

By the FCPA’s plain language, the contribution prong does not apply any time an organization receives any funds that could potentially be spent in elections. It applies when an entity has “the *expectation* of receiving **contributions**” to be spent in elections.
Id. para. 30 [italics in original, bold added]

The same point was made by University of Washington law professor William H. Rogers, Jr., a drafter of I-276, in Rogers, Jr., W.H., 1969. Model Bill on the Reporting of Campaign Contributions and Expenditures, 23 Vand. L. Rev. 293, p, 298: “...the draft seeks only to compel the disclosure of

all forms of tangible assistance. Plainly, it would be an exercise in futility to attempt to evaluate and report expressions of support from groups or persons whose views are already identified publicly...Impossibility of enforcement would be a reason enough to exclude personal services.”

Not only must there be direct electoral financing to be a “political committee,” raising money to *spend in an election must be a primary purpose* of the organization. For example, the 1972 Dan Evans Committee made a single contribution of \$500 to the Republican Central Committee; however, the Court held that did not make it a political committee subject to reporting requirements under the Act because “The primary purpose of the Dan Evans committee was not to influence the political process by *supporting or opposing candidates or ballot propositions through expenditures of its funds*, but to pay for miscellaneous expenses incurred by Governor Evans...”

[some emphasis added] *State v. (1972) Dan J. Evans*

Campaign Committee, 86 Wn.2d 503, 508-09, 546 P.2d 75

(1976) see also *State ex rel Evergreen Freedom Foundation v. WEA*, 111 Wn.App. 586, 603, 49 P.3d 894 (2002) (*EFF*), *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 997 (9th Cir., 2010) (citing *EFF*, 49 P.3d at 904)

The contribution prong correctly “asks whether an organization ‘expects to receive or receives contributions toward electoral goals.’” [emphasis added] *Utter v. BIAW*, 182 Wn.2d 398, 416, 341 P.3d 953 (2015) See also *EFF*, 111 Wn.App. at 601 (WEA is not a “political committee” because its primary purpose was to advance the economic and professional security of its members) and at 602 (if money is received for general operations it will not be a political committee under contribution prong unless funds are segregated for electoral purposes.) “[A]n entity becomes a political committee under the ‘contributions’ prong if the entity has given the public ‘actual or constructive knowledge that the organization is setting aside funds to support or oppose a

candidate or ballot proposition.” *Brumsickle*, 624 F.3d at 1020 (9th Cir., 2010) (citing *EFF*, 49 P.3d at 904)

As a matter of law Mr. Eyman is not and cannot be a “continuing political committee”¹⁰¹ because (1) he has no expectation of receiving donations in support of a ballot measure and (2) he is not an “organization” as required by the definition of a “continuing political committee.” The judgment of the trial court must be reversed as a matter of law. For the same reason the trial court’s Partial Summary Judgment¹⁰² to that effect must be reversed.

F. The discovery Order of September 13, 2019 characterizing Mr. Eyman as a “Continuing Political Committee” should be reversed

On September 5, 2019 the State moved for a discovery sanction pursuant to CR 37 to designate Mr. Eyman “continuing political committee” and hold he received \$766,447 in “political contributions” from charitable donors to pay his personal expenses. This was in *addition* to the \$500

¹⁰¹ RCW 42.17A.005(14)

¹⁰² CP 2852

daily fines. This order served as the basis of the February 2020 Partial Summary Judgment to that effect. At trial the court added about \$71,000 to that amount¹⁰³ as more recent donations than the \$766,000 figure based on a secret subpoena the State had served on financial institutions without notice to your undersigned in October 2019, not discovered by your undersigned until two years later.¹⁰⁴ The additional amount was added to the State's award without regard to the September 13, 2019 order, and obviously not based on that order. Moreover it is proof positive that the State's ability to prepare for trial was not diminished one wit. The question therefore remains, what is the effect of the September 13 order, if any.

September 13 Order Improperly imposes a Legal Conclusion

The order clearly sought to impose a legal conclusion (donations for Eyman's personal living expenses were "political contributions" in the sense he could be lawfully characterized

¹⁰³ Exhibit 352

¹⁰⁴ CP 5674 The subpoena was based on the bank releases attached to Mr. Eyman's motion for reconsideration of the September 13 order.

as a “continuing political committee.”) CR 37 permits the court to make a factual finding to remedy a relevant discovery violation; however, no authority to the knowledge of your undersigned permits the court to impose a legal conclusion (which is never the subject of discovery in any event.) However if a legal conclusion may be imposed under the rule, it is subject to de novo review to determine if it is a correct statement of the law (which this wasn’t.)

By its very terms CR 37 serves the function in extreme circumstances to establish *facts* wrongfully withheld in discovery. As detailed in the supporting declaration from Mr. Perkins the “fact” sought to be established was that Mr. Eyman received \$766,000 from donors for his personal expenses. However, the order goes beyond establishing this “fact” but legally characterized the donations as contributions to an electoral campaign in the sense of contributions to a political committee which must be reported. That is a legal conclusion, not a fact, and the wrong one at that. Your undersigned knows

of no precedent which permits the court to establish legal propositions by discovery order.

No Finding Eyman had capacity to comply with outstanding discovery

The moving party must establish the target of the CR 37 order willfully disobeyed a prior discovery order, meaning he had the present capacity to comply with the prior order and intentionally refused to do so. Here there was no finding in the CR 37 order that Mr. Eyman had the capacity to comply with outstanding discovery nor proof in the record supporting same. All the evidence is quite the contrary including the State's objection to the appointment of attorney Joel Ard as only a sole practitioner incapable of keeping up the with State's massive discovery demands¹⁰⁵ as well as Mr. Eyman's January, 2019 motion to be held in default because of his inability to cope with discovery as a pro se,¹⁰⁶ plus his repeated declarations to the same effect offered in response to the CR 37 motion.¹⁰⁷

¹⁰⁵ CP 2929

¹⁰⁶ CP 2942

¹⁰⁷ CP 1656 (Eyman spent \$900,000 so far to respond to discovery), 1659

Finding of Prejudice based on Perjured Declaration of Perkins

CR 37 also requires proof the failure to obey a discovery order “substantially prejudiced the opponent’s ability to prepare for trial.” *Burnett v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997), citing *Snedigar v. Hidderson*, 53 Wn.App. 476, 487, 768 P.2d 1 (1998) (stating due process concerns). Conclusions regarding prejudice are not enough, the court must put details on the record. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 694-96, 41 P.3d 1175(2002) See also *Marina Condominium v. Stratford*, 161 Wn.App. 249, 261, 254 P.3d 827 (2011) (conclusions of prejudice are inadequate). Failure to analyze considerations of prejudice on the record is an abuse of discretion subject to reversal. *Id.* at 262

Not only was there no discussion on the record,¹⁰⁸ what is in the record is perjurious. This CR 37 order denied Mr. Eyman a fair trial on the merits on the most basic issue in the

¹⁰⁸ RP (9/13/19)

case and accounted for the great majority of the monetary and non-monetary sanctions assessed.

To be more specific, the required showing of substantial prejudice was purportedly provided by paragraph 32 of the September 5 Perkins Declaration:

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.¹⁰⁹

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

However, the State could not stop cross examination of Mr. Perkins at trial where he reluctantly and evasively admitted

¹⁰⁹ CP 1197

he had all the cancelled checks for the \$766,447 in donations for a year prior to his September 5 declaration and that for each of the donors Mr. Eyman “concealed,” Perkins had the date of the check, the name of the donor, the amount, the address, and in most cases the telephone number as well. In short, he lied under oath, committed perjury suborned by the AG and admitted it:

Q: But you were aware of the identities at the time, weren’t you?

A: Yes, yes.

RP 396. Moreover as previously recounted, as part of Eyman’s motion for reconsideration the State was presented signed authorizations to all of his bank accounts, which the State used to obtain even more records introduced at trial.¹¹⁰ There was no prejudice.

The Remedy did not Fit the Wrong

Although Mr. Eyman was unable to complete discovery by the time of the September 13 order, his failure was not

¹¹⁰ Exhibit 40, CP 5674

withholding donor identities. However the remedy in the order was a sanction for that, not any other alleged deficiency to discovery responses. All donor identities were set forth in canceled checks in the actual possession of the State and Mr. Eyman's motion for reconsideration attached authorization for the State to continue to access all of his bank accounts without limitation.¹¹¹ And the State actually used that authorization shortly thereafter without notice to Eyman's counsel, not to be revealed for two years thereafter.¹¹² Production of bank records is an appropriate interrogatory response. CR 33(c)

CR 37 sanctions "may only affect the claims or defenses to which the discovery would have been pertinent. This specific relationship requirement is designed to ensure the remedy fits the wrong."¹¹³ For all of these reasons the CR 37 order should be reversed.

¹¹¹CP 1802

¹¹² CP 5674

¹¹³ 7 Moore's Federal practice (3rd ed.) sec. 37.50[2][c] See e.g. *Fjelstad v. Honda Motor Co. Inc.*, 762 F.2d 1334, 1342-43 (9th Cir. 1985) (Ninth Circuit reverses partial summary judgment after finding the sanction was not specifically related to the claim at issue.)

G. The Partial Summary Judgment¹¹⁴ should be reversed

For the above reasons the Partial Summary Judgment entered in February 2020 should be reversed, i.e. (1) it improperly relied on the September 13, 2019 discovery order¹¹⁵ and (2) it was erroneous as a matter of law on the merits, even based on the facts presented in support thereof by the State.¹¹⁶ The legal question addressed in the partial summary judgment must be, and was, resolved at trial on the merits with respect to the more recent \$71,000 in donations¹¹⁷ and should be resolved on the merits in the context of that assigned error, not a partial summary judgment premised on a suspect discovery order.

H. Injunction Violates FCPA because it does not require what the statute mandates nor prohibit what it forbids

RCW 42.17A.750(1)(i) allows injunctions for two reasons only: (1) to prevent the doing of an act prohibited by the statute and (2) to compel the doing of an act required by the statute.

¹¹⁴ CP 2852

¹¹⁵ RP(2/21/20) 16

¹¹⁶ See Cross Motion for Partial Summary Judgment, CP 2807

¹¹⁷ See Finding 2.56

There are no Washington reported cases dealing with the application/scope of this provision.

One must ask where authority for any of the following is found in the FCPA:

- a. Prohibiting Eyman from misleading political contributors as to why they should donate to a political committee.
- b. Prohibiting Eyman from receiving funds or payment from any person or vendor who has or might provide services to a political committee associated with Eyman.
- c. Requiring Eyman to report to the Washington Public Disclosure Commission any gifts, donations or other funds received except (1) funds used for legal defense or (2) W-2 wages paid by an employer.
- d. Prohibiting Eyman from forever managing, controlling, negotiating or directing financial transactions for any political committee (even though Eyman was deemed to personally be one). This includes prohibiting 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 family to support his “political work” without first establishing a political committee, with all decisions for committee expenditures made by persons other than 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 Eyman, and (xi) soliciting payments from contributors directly to campaign vendors.¹¹⁸

An additional question also arises as to the standing of the Attorney General to seek some or all of this relief. For example, the first injunction prohibits Mr. Eyman from “misleading” campaign donors. Since the FCPA does not address this issue, any disputes over donors claiming to have been misled should be resolved between Mr. Eyman and the donors. The State would have no standing to represent the interests of the donors.

Likewise, the prohibition of receiving payments from vendors who provide services to a political committee

¹¹⁸ It cannot be overlooked that, while designated by the trial court to be a “political committee,” Eyman is simultaneously prohibited from doing many if not most of the acts of a political committee.

associated with Mr. Eyman is not derived from the statute.

Going through the list of injunctions, it's the same for every item. There is no statutory basis for any of the edicts.

What we have is the Attorney General promoting extra-legal remedies on a vigilante basis, deciding for himself what he wants the law to be rather than what it is.

The common law requirements for injunctive relief are fairly stringent.¹¹⁹ But given that we are also talking about what amounts to prior restraint of First Amendment activity, it seems almost inconceivable that the appellate court could approve what was done by the Attorney General and the trial court.

Other trial errors

I. Eyman did not misreport Databar funds

Finding 2.60 claims a \$23,000 refund due the Voters Want More Choices Committee were paid directly to Mr. Eyman and was not reported to the PDC "as required." This

¹¹⁹ Injunction is an extraordinary remedy designed to prevent serious harm; its purpose is not to protect a plaintiff from mere inconveniences or speculative and insubstantial injury. *DeLong v. Parmelee*, 157 Wn.App. 119, 236 P.3d 936 (2010).

claim was not asserted in the State's amended complaint and not properly before the court, and it was error even to consider it.¹²⁰

However, it is an excellent illustration of how reporting prerogatives and requirements of the FCPA are exclusively vested in the political committee treasurer, no one else. Mr. Eyman was not the treasurer of this campaign and was not allowed to amend the report regarding Databar for that reason, although he tried and was precluded from doing so by the PDC. Mr. Eyman requested Barbara Smith, the actual treasurer to amend the report, however she couldn't because a new treasurer had taken over. Mr. Eyman nonetheless submitted an amended report to the PDC which it posted on its website but refused to accept for filing because Mr. Eyman was not the treasurer.¹²¹

Although the claim is "Defendant Eyman failed to report" he not only had no legal duty to report but was specifically barred by the PDC from reporting. In actuality,

¹²⁰ RP 289

¹²¹ RP 292-304

funds from Databar were paid to Mr. Eyman to compensate him for monies due and owing from the committee with the full knowledge and agreement of the other committee officers.

The finding lacks substantial evidence and is an erroneous legal conclusion.

The FCPA was unconstitutionally applied to characterize Mr. Eyman a “continuing political committee” and subject him to reporting requirements

J. The trial court Unconstitutionally applied the FCPA to Mr. Eyman

Unless the trial court’s characterization of Mr. Eyman as a “continuing political committee” with commensurate reporting requirements enforced through injunctive relief is reversed, the FCPA is unconstitutionally applied to Mr. Eyman because it (1) abridges his First Amendment right to solicit and use charitable donations, (2) unconstitutionally requires him to disclose the identity of charitable donors, (3) subjects him to unconstitutionally oppressive reporting requirements, and (4) renders the FCPA unconstitutionally vague and overbroad.

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. Eyman’s participation as to how contributions may be spent.¹²² But it’s even worse than this because (1) the only purpose of a political committee is to support candidates or ballot measures¹²³ (Mr. Eyman is neither) and (2) contributions to a political committee cannot be used for personal purposes.¹²⁴ In other words, this is a Catch-22 that makes it impossible for Mr. Eyman to live as a human being.

1. The FCPA is unconstitutionally applied to abridge the First Amendment right to beg

¹²² Findings, fourth injunction, pp. 30-32.

¹²³ RCW 42.17A.005(41).

¹²⁴ RCW 42.17A.445.

As stated in Mr. Eyman’s trial court motion for reconsideration,¹²⁵ 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...”¹²⁶

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

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.*

¹²⁵ CP 5311

¹²⁶ Findings, fourth injunction, subsection 9, p. 31, App. A

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 at 214. Mr. Eyman does as much when asking friends and family for financial assistance.

State v. TVI, Inc., d/b/a Value Village, __ Wn.App. __, 493 P.3d 763 (2021) holds the Attorney General’s attempts to regulate charitable solicitations are subject to strict scrutiny is applicable here as well.

2. Forced Reporting of Donor identities Violates First Amendment and is a Private Affair¹²⁷

If Mr. Eyman is a “continuing political committee” he must disclose 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*, 364 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

¹²⁷ “So whenever you give alms, do not sound a trumpet before you, as the hypocrites do in the synagogues and in the streets, so that they may be praised by others. Truly I tell you, they have received their reward. But when you give alms, do not let your left hand know what your right hand is doing, so that your alms may be done in secret; and your Father who sees in secret will reward you.” Matthew 6:2-6:4 (N.R.S.V.) See also Const. Art I, Sec. 7

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 inhibits “[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), quoting *American Constitutional Law Foundation v. Meyer*, 120 F.3d 1092, 1103 (10th Cir. 1997).

Illustrative of the importance of anonymity is the Attorney General’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. 645.¹²⁸

3. 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.

¹²⁸ RP 568-71 "...the consequences outlined by this letter were pretty scary for a person of my means."

The FECA incorporates extensive, and almost identical reporting requirements for “political committees” to those under our FCPA which the state court 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 Supreme 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 more 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 forced Mr. Eyman — and is equally unconstitutional.

4. The injunctions violate the First Amendment, and are vague and/or overbroad

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.”¹²⁹ This injunction echoes a much narrower provision of the FCPA which our court held facially

¹²⁹ Findings, first injunction, p. 30

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 accomplishes 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 Wn.App. 460, 150 P.3d 580 (2006). This standard applies to both civil and criminal proceedings. *Mays v. State*, 116 Wn.App. 864, 68 P.3d 1114 (2003). Likewise, due process requires that prohibitions not be so broadly drawn as to encompass protected activity. *Sinnott v. Skagit Valley College*, 49 Wn.App. 878, 746 P.2d 1213, rev. den. 110 Wash.2d 1010 (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 reversal Mr. Eyman has 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.”¹³⁰ 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?

The Court’s Remedies of monetary and injunctive relief should be reversed.

If this court reverses the trial court judgment on liability grounds, as prayed, the following would be moot.

¹³⁰ Findings, second injunction, p. 30.

K. Money Judgment violated Excessive Fines Clause¹³¹

The trial court awarded judgment for over \$2.6 million in penalties and \$2.8 million in attorney fees against Mr. Eyman for a total of nearly \$6 million. This is non-dischargeable in bankruptcy and accrues interest at over \$55,000 per month. For all practical purposes Mr. Eyman is indigent, this litigation has forced him into bankruptcy, has broken him,¹³² has destroyed his marriage, and the court's injunction even bars him from begging.

Violations under the FCPA are punishable by statutory penalties. *State v. Grocery Manufacturers Association*, No. 99407-2, January 20, 2022.

The trial court's February 10, 2021 Findings of Fact and Conclusions of Law and Injunction express the monetary awards against Mr. Eyman as nothing but penalties. Conclusions of Law ¶¶ 3.1 – 3.23.

¹³¹ US Const. Amendment 8 & WA Const. Art 1, Sec. 14

¹³² CP 5662

City of Seattle v. Long, ____ Wn.2d ____, 493 P.3d 94 (2021) holds the Eighth Amendment’s prohibition against excessive fines applies to any state action that is at least partially punishment. 493 P.3d at 109. A penalty imposed by statute is by definition punishment. BLACK’S LAW DICTIONARY 1290 (Rev. 4th ed.).

The monetary penalties imposed on Mr. Eyman were *intended* as punishment. Once the state action has been determined to be punishment, the court next looks to whether the fines are constitutionally excessive. 493 P.3d 109. “The central tenant of the excessive fines clause is to protect individuals against fines so oppressive as to deprive them of their livelihood.” 493 P.3d at 113. Aside from the massive fine, the court’s injunction even enjoins Mr. Eyman from self-employment and charitable mercy. Attorney General Robert Ferguson is a vicious man when it comes to dealing with his political adversaries, but the trial court would not stand in his way. The court in *Long* articulated four factors to be examined:

Our gross disproportionality test considers "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused," as well as a person's ability to pay the fine.

Id. at 114 (citing *Grocery Mfrs. Ass'n*, 195 Wash.2d at 476)

It is the offender's ability to pay and effect on his livelihood that is at issue in Mr. Eyman's case. "A fine that would bankrupt one person would be a substantially more burdensome fine than one that did not." 493 P.3d at 113.

When a person has a complete and total inability to pay the fine, none of the other factors matter. The penalty is unconstitutionally excessive.

The total judgment of nearly \$6 million represents an impossible sum for Mr. Eyman to pay. As the court is well aware and may take judicial notice Mr. Eyman was forced into bankruptcy by this action.¹³³

¹³³ Case no. 18-14536-MLB, USBC WDWA

Our court's January 20, 2022, decision in *State v. Grocery Manufacturers Association* is duly noted. The court held a multi-million-dollar triple damages fine was not excessive. But that case involved corporate parties who obviously had access to large sums of money and had the ability to pay. This is completely opposite the situation with Mr. Eyman.

Furthermore, when Mr. Eyman tried to present testimony to the trial court concerning his inability to pay, he was barred from doing so based on the Attorney General's objection.¹³⁴ This is reversible error; however elsewhere in the record Mr. Eyman testified his net worth at the time of trial was \$32,000 subject to over \$10,000 per month payments to the State and no reliable source of income after the State had cleared out his bank accounts in the Spring of 2020.¹³⁵ He is indigent.

¹³⁴ CP 909

¹³⁵ RP 730, 811, 812, CP 5662

L. State not entitled to any award of attorney fees or costs under RCW 42.17A.780

In 2018 the legislature passed ESHB 2938. This statute not only recodified most of RCW 42.17A.765(5) to RCW § 42.17A.780, but also narrowed the prevailing party fee provision to only benefit the Public Disclosure Commission and a prevailing defendant. Under the plain language of the statute in effect since July 31, 2018 the only class of persons entitled to a fee award is the public disclosure commission and prevailing defendants, not the State.

The legislature's decision to delete the proviso "the court may award to the State" and replace it with "the court may award to the commission" [and prevailing defendant] is clear and unambiguous. The Court must give effect to the intent of the legislature. "The right to attorney fees, as well as the determination of the amount thereof, is governed by the statute in force at the termination of the action, rather than at the time of its commencement." *Petersen v. Port of Seattle*, 94 Wn.2d 479, 487, 618 P.2d 67 (1980); *Mackey v. American Fashion Inst. Corp.*, 60 Wn.App. 426, 430, 804 P.2d 642 (1991); *Bellingham v. Eiford Constr. Co.*, 10 Wn.App. 606, 608, 519 P.2d 1330, review denied, 84 Wn.2d 1002 (1974).

On January 14, 2019, the State filed its First Amended Complaint. The trial occurred in late 2020 and early 2021. Under the laws of Washington State in effect at the time this action was terminated, the State is not entitled to its fees and costs.

M. Eyman entitled to reasonable attorney fees on appeal

Pursuant to RAP 18.1(b) Appellants Eyman request an award of reasonable attorney fees, costs and expenses at trial and on appeal. Such an award, as discussed above, is based on RCW 42.17A.780 which provides a prevailing defendant “shall” be entitled to such an award.

V. CONCLUSION AND REQUEST FOR RELIEF

Appellant Eyman requests the trial court judgment be reversed, including the monetary penalty, attorney fees, costs, and injunction. Further, Appellant Eyman requests he be awarded all his reasonable attorney fees, costs and expenses incurred at trial and on appeal pursuant to RCW 42.17A.780.

I certify that this Brief contains 15,630 words. A Motion to File Overlength Brief is pending.

RESPECTFULLY SUBMITTED this 18th day of February
2022.

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