No. 101844-4

SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II NO. 56653-2-II

STATE OF WASHINGTON,

Respondent.

v.

TIM EYMAN AND
TIM EYMAN WATCHDOG FOR TAXPAYERS LLC,

Appellants/Petitioners

PETITION FOR REVIEW BY WASHINGTON STATE SUPREME COURT

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I. IDENTITY OF PETITIONER

Mr. Tim Eyman and Tim Eyman Watchdog for Taxpayers, LLC through their attorney Richard B. Sanders of the Goodstein Law Group, PLLC files this petition.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of *State v. Eyman*, 24 Wn. App. 795, 521 P.3d 265 (2022).

III. ISSUES PRESENTED FOR REVIEW

A. Continuing Political Committee

Is an individual properly characterized as a "continuing political committee" as defined by RCW 42.17A.005(14) when he is neither an "organization" nor does he have the "expectation of receiving contributions or making expenditures in support of…any ballot proposition", *Id.* at (41), but raises money through charitable contributions to pay his own personal non-electoral expenses?

B. CR 37 Order Imposing Continuing Political Committee

As an ancillary issue if the answer to issue "A" is "no," is it error for the trial court acting under CR 37(b)(2)(A) to declare one a continuing political committee when such an order violates strict criteria of necessity, prejudice and relevance detailed in the accompanying argument?

C. Properly Reporting Payments to Vendor

Does a political committee properly report actual payments to a signature gathering vendor, rather than an officer of the political committee, if the vendor subsequently pays that committee officer from its profits for a personal consulting contract?

D. No Duty to Report Loans to Donor

Does a person or other entity which loans money to a potential in-kind donor to a ballot measure campaign without reporting the loan to the Public Disclosure Commission (PDC) engage in concealment prohibited by RCW 42.17A.435 when

the ballot measure campaign committee fully reports the in-kind contributions from the borrower?

E. Only Treasurer Has Duty to Report

Does a political committee officer who is not the treasurer have a duty, or even the ability or right, under the Fair Campaign Practices Act (FCPA) to report campaign contributions or expenditures to the PDC in addition to reports filed by the treasurer?

F. No Statutory Authority for Injunction

Is the entire injunction entered by the trial court without statutory authority because it does not enjoin a person from doing an act prohibited or compel the performance of an act required by the FCPA contrary to RCW 42.17A.750(1)(i)?

G. State Not Entitled to Attorney Fees

As a prevailing party in an action brought by the State of Washington, is the State entitled to recover its reasonable

attorney fees under RCW 42.17A.780 notwithstanding the statute was previously amended in 2018 by ESHB 2938 to specifically delete the State's entitlement to such an award?

H. FCPA Unconstitutional As Applied

As an ancillary issue to be reached if the Published Opinion is not reversed on statutory grounds, is the FCPA and injunction unconstitutional under the First Amendment to the United States Constitution and Article I Section 5 of the Washington Constitution as applied by the Published Opinion because (1) both are unconstitutionally vague; (2) the FCPA is construed inconsistently liberal or strict depending on whether the remedy sought in a particular case is civil or criminal; and (3) both unconstitutionally violate freedom of speech including the right to solicit charitable contributions, advocate political issues, and associate anonymously with others?

IV. Statement of the Case[1]

Tim Eyman appeals the trial court's ruling that Eyman engaged in multiple violations of the Fair Campaign Practices Act (FCPA), the imposition of a monetary penalty of over $2.6 million plus nearly $3 million in attorney fees, and an injunction prohibiting Eyman from engaging in a wide range of activities. The violations arose from four incidents.

First, Eyman filed initiative 1185 in 2012 and served as an officer on the campaign committee. Mr. Stan Long, CPA and former IRS auditor, served as the treasurer and timely filed all reports. The committee hired Citizen Solutions to collect signatures to help I-1185 qualify for the ballot, agreeing to pay a fixed price for signatures totaling $1,050,000[2]. Eyman agreed with Citizen Solutions to increase the price per signature twice

[1] The following is largely verbatim from the Published Opinion without further attribution but has been supplemented to further address issues raised in this petition.
[2] Exhibit 153

during the campaign to provide an additional incentive directly to signature gathers (not vendor profit)[3] for a total contract price of approximately $1,240,000[4]. The committee treasurer reported all payments to Citizen Solutions to the Public Disclosure Commission (PDC) totaling $1,245,475.[5] After I-1185 signatures were gathered, Citizen Solutions paid Eyman $308,185.50 for a consulting contract. Neither the campaign committee treasurer nor Eyman reported that payment to the PDC. Trial court Finding 2.17 accurately states the facts exactly as reported by Treasurer Long:

> From April 11-July 6, 2012, Defendant Eyman's political committee and other sponsors paid Defendant Citizen Solutions, LLC $1,245,475 to gather signatures to qualify I-1185 for the 2012 ballot.

Second, Eyman filed initiative 517 later in 2012, and served as an officer on the campaign committee with Stan Long

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[3] Exhibit 83
[4] (Ex.82 + $100,000 at .50 cents/signature) + (Ex. 85 + $90,000 at $1.50) = $190,000
[5] Finding 2.17

also its treasurer. Eyman's LLC loaned $200,000 to Citizens in Charge. Citizens in Charge then provided $182,806 of in-kind signature gathering services to the I-517 campaign. Citizens in Charge later repaid Eyman $103,000 of the loan.[6] I-517's committee treasurer, Stan Long, reported Citizen in Charge's in-kind donations but did not report the loan nor repayments believing the FCPA did not require such loan activity be reported.

Third, in 2017 Eyman's political committee was owed a $23,008 refund from Databar, Inc., a vendor. Instead returning the refund to the committee, the refund was transferred to Eyman's personal account by agreement of the other officers. The committee treasurer Barbara Smith did not report this payment. By the time Mr. Eyman discovered the error a new person had assumed the duties of treasurer and was unwilling to amend the report because she wasn't treasurer at the time. So

[6] Finding 3.5, "Eyman received $103,000 in loan repayments."

Mr. Eyman petitioned the PDC to allow *him* (a committee officer) to amend the report.[7] The PDC refused, holding under the statute *only* the treasurer was granted responsibility to electronically report, and Eyman was not the treasurer.[8]

Fourth, Eyman solicited charitable donations from supporters to pay his living expenses. The donations were not for any specific initiative campaign, but Eyman communicated that he needed the donations to continue working on ballot initiatives. He received over $800,000 in donations, which he used only for personal purposes. Eyman neither registered as a political committee nor a "continuing political committee," nor reported any of these donations to the PDC.

Following a bench trial, the trial court ruled that Eyman violated the FCPA by failing to report to the PDC (1) that certain payments made to Citizen Solutions were to pay Eyman

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[7] Ex. 194, Perkins: RP 296-298, Eyman: RP 805-808
[8] Perkins: RP 298, 302-304, Eyman RP 805-808, WAC 390-19-010

rather than signature gathering, (2) the loan he made to Citizens in Charge and the payment he received from Citizens in Charge, (3) the Databar refund he received, and (4) the personal contributions he received. The court imposed a civil penalty against Eyman totaling over $2.6 million and awarded over $2.8 million in reasonable attorney fees and costs to the State. The court also issued an injunction, precluding Eyman from engaging in certain activities regarding political committees and from receiving any gifts or donations without establishing a continuing political committee.

The Published Opinion largely affirmed however reversed the trial court's conclusion Eyman violated the FCPA by failing to report receipt of a $103,000 loan repayment from Citizens in Charge (but refused to remit the judgment in that amount); reversed portions of the injunction (refusing to consider other provisions) as outside the statutory authorization to order what the FCPA requires and prohibit what it forbids;

and remanded to reconsider application of the excessive fines clause.

The Published Opinion rejected Mr. Eyman's claim that the FCPA be strictly construed against the government because it has criminal penalties and trenched on First Amendment rights, holding it should be liberally construed in favor of the government because only civil penalties were imposed in this particular case, i.e. it would be construed inconsistently depending on whether civil or criminal penalties were sought.

Contrary to the argument of either party the Published Opinion found numerous provisions of the FCPA ambiguous, resolving all such ambiguities in favor of the State, e.g. holding a non-treasurer responsible for a treasurer's alleged reporting violation; holding the definition of a "political committee" and "continuing political committee" ambiguous, even expressly rejecting the "plain meaning."

The Published Opinion rejected heightened standards of review to justify restrictions on First Amendment rights requiring "exacting" or "strict" scrutiny, refused an independent review of the record, only determining if there was sufficient evidence present to justify a factual finding, and refused to apply exacting First Amendment scrutiny to State claims targeting charitable solicitations, all contrary to *State v. TVI, Inc., d/b/a Value Village,* No. 100493-1 (Wash. Sup. Ct. February 23, 2023)

V. ARGUMENT

Review of this Published Opinion should be accepted because (1) it conflicts with decisions of the Supreme Court; (2) conflicts with published decisions of the Court of Appeals; (3) raises significant questions under the state and U.S. constitutions; and (4) raises issues of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)

The entire proceeding at trial and on appeal puts at issue the construction and application of the FCPA as well as the constitutionality of the statute as applied to Mr. Eyman. This is a **published** opinion of far-reaching public importance.

Issue A: Characterizing Mr. Eyman Individually As a "Continuing Political Committee"

This holding in the Published Opinion is unprecedented in this or any jurisdiction, thus it raises an issue of substantial public interest.

RCW 42.17A.005(14) defines "continuing political committee" as "a political committee that is an organization of continuing existence not limited to participation in any particular election campaign or election cycle." Whereas section 41 of the same statute defines "political committee" as "any person…having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or ballot proposition."

Therefore, by the plain language of the statute, a "continuing political committee" must be (1) an "organization" and (2) have the expectation of receiving contributions or making expenditures to support or oppose a candidate or ballot proposition.

The Published Opinion concedes the "plain meaning" of "organization" "does not include a single individual" yet rejected the plain meaning claiming it ambiguous. Opinion

¶146 This is contrary to *State Department of Ecology v. Campbell and Gwinn*, 146 Wn.2 1, 43 P.3d 4, 10 (2002) which mandates statutes be construed by their plain meaning informed by statutory context. The Opinion reasoned because a single person could be a committee and because a committee could be continuing, therefore a single person could be a continuing committee but, of course, that does not follow from, and is contrary to, the statutory definition. RCW 42.17A.005(41)

As to the "expectation of receiving contributions or making expenditures in support of…any ballot measure" the Opinion argues "support" is ambiguous, i.e. it may be "direct" or "indirect." No case anywhere has ever found this term ambiguous nor did the State claim it is. Rather the statutory context includes RCW 42.17A.205 which requires committee reporting upon the "expectation of receiving contributions or making expenditures in the *election campaign*." (italics added) The Opinion however reads this statute out of the chapter, as a contribution to Mr. Eyman's personal expenses is obviously not a contribution to an "election campaign." Moreover, even the cannon of liberal construction relied upon by the Opinion by its own language pertains to "financing of political campaigns." RCW 42.17A.001(1), (10)

The Opinion is contrary to multiple Supreme Court opinions construing political committee reporting requirements as only applicable to *campaign* contributions and expenditures: *State v. The (1972) Dan J. Evans Campaign Committee*, 86

Wn.2d 503, 504-509, 546 P.2d 75 (1976) (to be a "political committee" the Primary purpose must be to expend funds to support or oppose candidates or ballot measures, not "to pay for miscellaneous expenses incurred by" the office holder [or the individual in this case.]); *State v. Grocery Mfrs. Ass'n,* 198 Wn.2d 888, 892, 502 P.3d 806 (2022) ("…the act [FCPA] requires…political committees…to disclose their campaign contributions and spending"); *Utter v. BIAW,* 182 Wn.2d 398, 414, 341 P.3d 953 (2015) (a primary purpose of a campaign committee must be to support or oppose ballot measures); *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1007 (9th Cir, 2010) (The interest is "where political campaign money comes from and how it is spent," political committees must be "campaign related" [at 1009 citing *Buckley v. Valeo*, 424 U.S. 1, 79 (1976)], and political committee disclosure requirements increase as the committee more actively engages in "campaign spending" [at 1013])

But Eyman does *no* "campaign spending," he solicits and spends money only for and on himself for personal expenses.

Moreover, the Published Opinion's disposition of this issue violates Mr. Eyman' First Amendment right to solicit, use, and disclose charitable contributions. See issue "H."

This issue justifies review under all the applicable criteria.

Issue B: Ancillary Issue That Trial Court Imposed "Continuing Political Committee" Legal Conclusion As a CR 37 Discovery Sanction

The Published Opinion did not reach this issue because approximately $70,000 of the fines imposed on Mr. Eyman for not registering as a committee were added at the time of trial based on pretrial discovery and not dependent on the discovery order or partial summary judgment. Therefore, if the court reverses on Issue A, it should address the propriety of the discovery order.

This order was entered in September 2019 at a time when Mr. Eyman was pro se and unable to complete discovery

demands unrelated to charitable donor identities. The trial date was over a year away. The State sought to designate Mr. Eyman a "continuing political committee" and hold he received $766,447 in "political contributions" from charitable donors to pay his personal expenses.

The CR 37 order was premised on the perjured declaration of the state's investigator Tony Perkins who attested in paragraph 32 of his September 5 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.

CP 1197 However in Perkins' cross examination at trial he admitted he had all the cancelled checks for the $766,447 a year prior to his 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 phone number as well. RP 396

Entry of the CR 37 order was inconsistent with *Burnett v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997); *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 694-96, 41 P.3d 1175(2002); *Marina Condominium v. Stratford*, 161 Wn. App. 249, 261, 254 P.3d 827 (2011); and *Nieshe v. Concrete School Dist*., 129 Wn.App. 632, 127 P.3d 713 (2005) because sanctions are not warranted for discovery the State already had; sanctions at $250 per day continued; the order imposed legal conclusions rather than purporting to establish discoverable facts; there was no finding Mr. Eyman had the present ability as a pro se to complete other discovery; and there was no proof or analysis on the record of actual prejudice to prepare for trial over a year in the future.[9]

Moreover, CR 37 sanctions "may only affect the claims or defenses to which the discovery would have been pertinent. This specific relationship is designed to ensure the remedy fits

[9] Discovery was completed and contempt purged with the assistance of your undersigned's firm in May 2020.

the wrong."[10] However this CR 37 order was entered to mischaracterize charitable donors, not discover them.

The order denied Mr. Eyman a fair trial on the merits and resulted in over a million dollars in fines. This issue should be reviewed as the CR 37 order violated Supreme Court and Court of Appeals published precedent and is of public importance.

Issue C: Properly Reporting Payments to Vendor

The I-1185 campaign treasurer reported all direct and in-kind payments to the signature gathering vendor, Citizen Solutions, as stated in the Published Opinion 1. All these payments went from the checking account of the campaign committee or in-kind contributor directly to deposit in the checking account of the vendor. Later using its own profit, the

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[10] 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.)

vendor sent a payment of $308,000 to Mr. Eyman's LLC in consideration of a consulting contract with Mr. Eyman.

However, because the vendor then sent a payment to Mr. Eyman, the State claimed $350,000 of the contract price payment should have been reported by the committee treasurer as a direct payment to Mr. Eyman, not the vendor.

RCW 42.17A.235(1)(a) provides each political committee shall file a report of "all contributions received, and expenditures made." Trial court Finding 2.17 found the I-1185 political committee and other sponsors "paid Citizen Solutions $1,245,475 to gather signatures to qualify I-1185 for the 2012 ballot." And that is exactly how treasurer Long reported it.

The FCPA has no requirement that either the committee or vendor report how the vendor spends its money. The issue meriting review is therefore whether the I-1185 committee violated the FCPA when it reported paying its vendor funds it

actually paid its vendor, and not reporting instead how the vendor expended *its* funds.

This issue of statutory construction merits review because it is inconsistent with the criteria set forth in *Campbell and Gwinn*, *supra,* requiring a statute be construed by its plain meaning, and is of public importance because in essence it requires a political committee to perform the legally impermissible task of reporting how the vendor expends *its* money.

Issue D: Not Reporting Loan to Potential Donor is Not Concealment

The Published Opinion recites Mr. Eyman loaned money to Citizens in Charge with the expectation that organization would make in-kind contributions to the I-517 campaign, and that this loan was not reported (although the in-kind contributions were reported.) This recitation is entirely correct!

However, then the Published Opinion claims this constituted concealment contrary to RCW 42.17A.435. That

statute provides "No contribution shall be made…in such a manner as to conceal the identity of the source of the contribution…" Therefor to be "concealment," there *must* be a reportable "contribution." But a loan is not a contribution.

Rather only a loan "for less than full consideration" is, by definition, a "contribution.' RCW 42.17A.005(15)(a) The Published Opinion and the trial court identified this as a loan and made no finding it was for less than full consideration.[11] All the testimony was it was to be repaid in full, and the trial court found "Eyman received $103,000 in loan repayments" (Finding 3.5) by the time he filed bankruptcy in November 2018.

[11]"The absence of a finding of fact in favor of the party with the burden of proof about a disputed issue is the equivalent of a finding against that party on that issue. [citing cases]" *Car Wash Enterprises, Inc. v. Kampanos*, 74 Wn. App. 537, 546, 874 P.2d 868 (1994)

The State's own witness, Tony Perkins, conceded a loan to a potential donor is not reportable—just like the identity of a credit card holder's bank is not reportable when the card holder makes a political contribution to a candidate. RP 339 But by the reasoning of the Published Opinion every bank issuing a credit card, or campaign committee which accepts a credit card contribution, engages in "concealment." However, Mr. Eyman is the only person, ever, anywhere, punished for not reporting a loan to a potential campaign contributor.

This issue merits review because claiming a loan is "concealed" when it need not be reported, violates the plain meaning cannon of construction set forth in *Campbell and Gwinn, supra*, and raises an issue of public importance since loans to potential donors are widespread in virtually every campaign, including donations routinely financed by credit cards, even to Supreme Court candidates.

Issue E: Only Treasurer Has Duty to Report

In none of the campaigns at issue was Mr. Eyman the treasurer. As a matter of fact, Mr. Eyman agreed to entry of judgment in favor of the State in 2002 that he *could not be* a treasurer. In the I-1185 and I-517 campaigns Mr. Stan Long, a CPA and former IRS agent, was the treasurer and filed accurate and timely reports.

However, even if he didn't, can Mr. Eyman be held liable under the statute for Mr. Long's alleged failure to do so? No case so holds and the plain meaning of the reporting statutes are to the contrary.

Every campaign committee must appoint and register a treasurer. RCW 42.17A.210 Each treasurer "shall file with the commission a report" of all information required and maintain books of account. RCW 42.17A.235 Each report required "must be certified as correct by the treasurer and the candidate." RCW 42.17A.240

Under the FCPA no person other than the treasurer may file a report and only the treasurer is provided with the electronic software enabling a report to be filed.[12]

In this very case Mr. Eyman attempted to file an amended report to correct what he thought was an error in the report filed by his treasurer. The PDC would not allow it. *See* discussion of Databar reporting in Statement of the Case, *infra.*

Yet the Published Opinion imposed personal liability on Mr. Eyman for alleged misreporting which he had no responsibility to make and no ability to correct.

Once again, this merits review because it is inconsistent with this court's criteria for statutory construction set forth the *Campbell and Gwinn, supra,* and raises an issue of public importance and first impression of who can or cannot report to the PDC and the consequence for doing so.

[12] See note 8 and WAC 390-19-010

Issue F: No Statutory Authority For the Injunction

The Published Opinion correctly held a portion of the injunction was invalid because it exceeded statutory authority, i.e. it did not "enjoin any person to prevent the doing of any act herein prohibited, or [ ] compel the performance of any act required herein," RCW 42.17A.750(1)(i). However, the Opinion failed to apply the same criteria to other provisions of the injunction which equally exceed statutory authority. This omission from the Opinion was justified because it claimed it was not supported by meaningful argument; however the injunction was set forth verbatim in the briefs, assigned as error, and clearly argued *in its entirety* exceeded statutory authority and violated the First Amendment in both his Opening (25, 30, 74-77, 88-90) and Reply briefs (34). The State did not even dispute this proposition; however simply argued the statutory language did not limit the trial court's authority.

Review should be granted on this issue because the brief's argument on this point complied with RAP 10.3(a)(6) and is inconsistent with *Cowiche Canyon v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549(1992), and *West v. Thurston County,* 168 Wn.App. 162, 187, 275 P.3d 1200 (2012) because appellant's argument was not merely "passing treatment of the issue" nor lacking in reason. If the claim is *every* provision of the injunction exceeds statutory authority, it should not be reasonably necessary to repeat that simple claim as to each provision.

Moreover, this statutory limitation on authority of the trial court to issue an injunction justifies review as an issue of first impression and public importance.

Issue G: State, Even if Prevailing Party, Not Entitled to Attorney Fees

In 2018 the legislature enacted LAWS OF 2018, ch. 304, Sec. 17 which 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.

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. Moreover "The right to attorney fees…is governed by the statute in force at the termination of the action, rather than at the time of commencement." *Peterson v. Port of Seattle*, 94 Wn.2d 479, 487, 618 P.2d 479, 487, 618 P.2d 67 (1980)

The Published Opinion however gutted the statutory change by interpreting RCW 42.17A.780 "as allowing an attorney fee award to the State in an FCPA action when the State is suing on behalf of the PDC." Opinion ¶188 Such is problematic because (1) the PDC is not a party here, only the State, and (2) as a matter of law the attorney general may *only* bring such an action to enforce the FCPA "*in the name of the*

state." (italics added) RCW 42.17A.765(1)(a) The PDC could have proceeded against Mr. Eyman directly but choose not to do so. RCW 42.17A.755(1)

Review should be granted because this is an issue of first impression justifying review as an important public issue and violated criteria set forth in *Campbell and Gwinn* requiring statutes be construed to affect their plain meaning.

Issue H: FCPA Unconstitutional as Applied

As an ancillary issue if the Published Opinion is not reversed on statutory grounds, the FCPA is unconstitutionally applied.

1. Statute Must Be Strictly and Narrowly Construed

The Published Opinion 16 expressly rejected a strict and narrow construction mandated by due process for a criminal statute, and the First Amendment for one which trenches on free speech.

Construing a statute with both criminal and civil remedies liberally or strictly depending on what remedies are invoked in the specific proceeding leads to inconsistent interpretations of the same provision contrary to *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8, 125 S.Ct. 377, 160 L.Ed. 2d 271 (2004) Following *Leocal* the Court of Appeals in a published opinion rejected a liberal construction of a statute even when calling for a liberal construction in its text as required by due process. *Internet Comm. & Entertainment v. State*, 148 Wn.App. 795, 201 P.3d 1045, 1049-52 (2009) See also *Southwick, Inc. v. State*, 191 Wn.2d 689, 705, 426 P.3d 693 (2018) (McCloud dissenting)

A strict and narrow construction is also required "to avoid constitutional doubt." *Utter,* 182 Wn.2d 398, at 434. This includes the definition of a "political committee" which must be subject to exacting scrutiny which requires it to be "narrowly tailored" to advance a sufficiently important governmental interest. *Id*. ("Political committees are defined by

making expenditures, not making contributions."), citing *Brumsickle*, 624 F.3d at 1005 (9th Cir. 2010) and *Buckley*, 424 U.S. at 41("Specificity of statutory limitation" is especially required where the legislation imposes "criminal penalties in an area permeated by First Amendment interests [citing cases]").

2. As Applied, FCPA is Unconstitutionally Vague

"A law is unconstitutionally vague if it fails to provide a reasonable opportunity to know what conduct is prohibited or is so indefinite as to allow arbitrary and discriminatory enforcement." *Brumsickle*, 624 F.3d at 1019. "First Amendment rights are not to be abridged or even chilled by statutory vagueness." *State ex rel PDC v. Rains*, 87 Wn.2d 626, 630, 555 P.2d 1368 (1976) Campaign finance disclosure statutes must be "narrowly drawn" and "narrowly construed" to avoid unconstitutional overbreadth. *Buckley*, 424 U.S. at 60-61

Neither party contended the FCPA was ambiguous, however the Published Opinion held it was just that, construing

it in every case to favor the government. "Because the First Amendment needs breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 (1963)

3. As Applied, the FCPA and Injunction Violate Free Speech Including the Right to Solicit Charitable Contributions, Advocate Political Issues, and Associate Anonymously.

Moreover, the Published Opinion's disposition of these issues[13] violates Mr. Eyman' First Amendment right to solicit, use, and disclose charitable contributions and contributors contrary to *TVI, supra*, and *City of Lakewood v. Willis*, 186 Wn.2d 210, 217, 375 P.3d 1056 (2016).

If Mr. Eyman is a "continuing political committee" he must not only hire a treasurer, disclose every penny of charitable income and every expenditure, but turn over all contributions to the committee bank account administered by

[13] See issue "A" and "F"

the treasurer, and expend none of it on himself. RCW 42.17A.445

These reporting requirements imposed on a single individual are even more unconstitutionally oppressive than found to be so in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed. 2d 538 (1986) ("*MCLF*"). The Published Opinion attempts to distinguish *MCLF* however our state has the same interest in campaign finance disclosure as the feds, the reporting requirements are essentially the same, and our statute *as here applied* has never survived exacting scrutiny. Our Supreme Court has followed *MCLF* three times with approval including San *Juan County v. No New Gas Tax*, 160 Wn.2d 141, 157 P.3d 831, 838 (2007) (we may look to provisions in the federal act for guidance).

Not only is the Opinion inconsistent with the statute, case law and precedent, but violates the standard of review in *TVI* by

not putting the burden on the government to justify restrictions on First Amendment rights by exacting or strict scrutiny, independently reviewing factual findings rather than just determining if there is sufficient evidence to justify them and protecting the right to seek and use charitable contributions with "exacting" First Amendment scrutiny.

This issue justifies review because it is of public importance, is inconsistent with opinions of this court and raises important questions under the First Amendment to the U.S. Constitution.

VI. CONCLUSION

For the reasons stated review should be granted.

I certify that this Petition contains 4,978 words.

Respectfully Submitted this 28th day of March 2023.

GOODSTEIN LAW GROUP PLLC

s/Richard B. Sanders
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State v. Eyman

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Reporter

24 Wn. App. 2d 795 | 521 P.3d 265 | 2022 Wash. App. LEXIS 2318

The State of Washington, *Respondent*, v. Tim Eyman et al., *Appellants*.

Subsequent History: Reconsideration denied by State v. Eyman, 2023 Wash. App. LEXIS 395 (Wash. Ct. App., Feb. 28, 2023)

Prior History: Appeal from Thurston Superior Court. Docket No: 17-2-01546-34. Judge signing: Honorable James J Dixon. Judgment or order under review. Date filed: 06/15/2021.

Headnotes/Summary

Summary

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: The State sought civil penalties against an individual who filed initiative measures and served as an officer of a political committee that advocated on behalf of such measures, asserting that the individual repeatedly violated the Fair Campaign Practices Act (FCPA) (ch. 42.17A RCW).

Superior Court: The Superior Court for Thurston County, No. 17-2-01546-34, James J. Dixon, J., on June 15, 2021, entered a judgment finding that the individual violated the FCPA and imposed a penalty of over $2.6 million and an injunction prohibiting the individual from engaging in a wide range of activities.

APPENDIX A

Court of Appeals: Holding that (1) the trial court properly found that the individual committed multiple violations of the FCPA, (2) the FCPA was not unconstitutional as applied to the individual, (3) some injunction provisions were not authorized by the FCPA, (4) the trial court did not err in awarding attorney fees to the State, (5) the State was entitled to attorney fees on appeal, and (5) the record was insufficient to determine on appeal whether the $2.6 million penalty violated the Eighth Amendment and Wash. Const. art. I, § 14 excessive fines clauses, the court *affirms* the judgment in part, *reverses* it in part, and *remands* the case for further proceedings.

Counsel: *Richard B. Sanders* and Carolyn A. Lake (of *Goodstein Law Group*); and *Seth S. Goodstein* (of *ROI Law Firm PLLC*), for appellants.

Robert W. Ferguson, *Attorney General*, and Stephen T. Sipe, Paul M. Crisalli, and Eric S. Newman, *Assistants*, for respondent.

Eric R. Stahlfeld on behalf of Freedom Foundation, amicus curiae.

Judges: Authored by Bradley Maxa. Concurring: Linda Lee, Anne Cruser.

Opinion by: Bradley Maxa

Opinion

[As amended by order of the Court of Appeals February 28, 2023.]

¶1 Maxa, J. — Tim Eyman and Tim Eyman Watchdog for Taxpayers LLC (collectively Eyman) appeal the trial court's ruling that Eyman engaged in multiple violations of the Fair Campaign Practices Act (FCPA), ch. 42.17A RCW, the imposition of a monetary penalty of over $2.6 million, and an injunction prohibiting Eyman from engaging in a wide range of activities. The violations arose from four incidents.

¶2 First, Eyman filed Initiative 1185 in 2012 and served as an officer on the campaign committee. The committee hired Citizen Solutions to collect signatures to help I-1185 qualify to be on the ballot, agreeing to pay a fixed price per signature. Eyman agreed with Citizen Solutions to increase the price per signature twice during the campaign. The committee reported all payments to Citizen Solutions to the Public Disclosure Commission (PDC). After the I-1185 campaign ended, Citizen Solutions paid Eyman $308,185.50. Neither the campaign committee nor Eyman reported the payment to the PDC.

¶3 Second, Eyman filed Initiative 517 later in 2012, and served as an officer on the campaign committee. Eyman paid $200,000 to Citizens in Charge, characterizing it as a loan. Citizens in Charge then provided $182,806 of in-kind signature gathering services to the I-517 campaign. Citizens in Charge later paid Eyman $103,000, which was characterized as repayment of the loan. The committee reported Citizens in Charge's in-kind donation to the PDC, but Eyman did not report the loan or the payment he received.

¶4 Third, in 2017 Eyman's political committee was owed a $23,008 refund from Databar Inc., a vendor. Instead of the refund being returned to the committee, the refund was transferred to Eyman's personal account. Neither the committee nor Eyman reported this payment.

¶5 Fourth, Eyman solicited donations from supporters to pay for his living expenses. The donations were not for any specific initiative campaign, but Eyman communicated that he needed the donations to continue working on ballot initiatives. He received over $800,000 in donations, which he used for personal purposes. Eyman did not register as a political committee or a continuing political committee or report any of these donations to the PDC.

¶6 Following a bench trial, the trial court ruled that Eyman violated the FCPA by failing to report to the PDC (1) that certain payments made to Citizen Solutions were to pay Eyman rather than for signature gathering, (2) the loan he made to Citizens in Charge and the payment he received from Citizens in

Charge, (3) the Databar refund he received, and (4) the personal contributions he received. The court imposed a civil penalty against Eyman totaling over $2.6 million and awarded over $2.8 million in reasonable attorney fees and costs to the State. The court also issued an injunction, precluding Eyman from engaging in certain activities regarding political committees and from receiving any gifts or donations without establishing a political committee.

¶7 We hold that (1) the trial court did not err in ruling that Eyman violated the FCPA by improperly reporting and concealing the $308,185.50 payment from Citizen Solutions, (2) the trial court did not err in ruling that Eyman violated the FCPA by making $200,000 in loans to Citizens in Charge to use to support I-517 and thereby concealing the source of his contributions to I-517, (3) the trial court did not err in ruling that Eyman violated the FCPA by failing to report his receipt of the $23,008 Databar refund, (4) the trial court did not err in concluding that Eyman's receipt of personal contributions to allow him to work on ballot initiatives made him a "political committee" and a "continuing political committee" and therefore that Eyman violated multiple reporting requirements, (5) the FCPA is not unconstitutional as applied to Eyman, (6) the trial court's injunction provisions are not unconstitutional, and (7) the trial court did not err in awarding attorney fees to the State under RCW 42.17A.780.

¶8 However, we also hold that (1) the trial court erred in ruling that Eyman violated the FCPA by failing to report the $103,000 payment he received from Citizens in Charge, (2) the FCPA does not authorize the trial court's injunction provisions prohibiting Eyman from misleading potential donors and receiving payments from vendors, and (3) we cannot determine on this record whether the monetary penalty imposed on Eyman violated the excessive fines clauses in the United States and Washington Constitutions in the absence of sufficient evidence regarding Eyman's ability to pay the penalty.

¶9 Accordingly, we affirm in part and reverse in part the trial court's final judgment, and remand for the trial court to (1) vacate the conclusion that Eyman violated the FCPA by failing to report the $103,000 payment he received from Citizens in Charge, (2) strike the injunction provisions prohibiting Eyman from misleading potential donors and receiving payments from vendors, and (3) consider Eyman's ability to pay the penalty imposed and to adjust the penalty if necessary to comply with the excessive fines clause.

FACTS

Citizen Solutions Payment to Eyman

¶10 In January 2012, Eyman filed with the Office of the Secretary of State an initiative to the people that was labeled as I-1185. According to its official ballot title, I-1185 "would restate existing statutory requirements that legislative actions raising taxes must be approved by two-thirds legislative majorities or receive voter approval, and that new or increased fees require majority legislative approval." Clerk's Papers (CP) at 5. Eyman also formed a political committee called "Voters Want More Choices – Save the 2/3rds (Mike Fagan)" (VWMC) to advocate for I-1185. Eyman, Mike Fagan, and Jack Fagan were listed in the PDC filings as officers, and Stan Long was listed as treasurer.

¶11 In April 2012, VWMC entered into a contract with Citizen Solutions to obtain up to 300,000 signatures in support of I-1185 at a price of $3.50 per signature. Edward Agazarm, Roy Ruffino, and Edward's son William Agazarm were the principals of Citizen Solutions.

¶12 On May 15, William Agazarm emailed Eyman about raising the price from $3.50 to $4.00 for the remaining 200,000 signatures. Eyman agreed to the $0.50 increase for signature collection.

¶13 On June 5, Eyman emailed Ruffino and William Agazarm with a copy to Edward Agazarm about joining Citizen Solutions as a partner. Eyman stated that he was working hard to get an extra $270,000 for himself by getting it paid to Citizen Solutions. If they could not agree on a partnership, he proposed that the $270,000 be paid to his company, Tim Eyman Watchdog for Taxpayers LLC (Watchdog), as a sales commission.

¶14 On June 26, Edward Agazarm emailed Eyman regarding an additional increase in the per signature price. He stated that the "$270,000 outstanding on the signature contract has hampered our efforts and is tying our hands." Ex. 85. On June 27, William Agazarm emailed Eyman and urged him to increase the cost per signature price by $1.50. Eyman agreed. Eyman then sought additional contributions from donors.

¶15 Citizen Solutions made the final payment to its signature gathering contractors on July 3. On July 5, VWMC paid Citizen Solutions the final agreed amount remaining of $170,825. Eyman continued to solicit donations. Citizen Solutions received direct payments from the Washington Wine and Beer Wholesalers

Association for $27,150 on July 5 and from the Association of Washington Businesses for $45,000 on July 6. The petitions with the required number of signatures were submitted to the secretary of state on July 7.

¶16 On July 9, Eyman sent a letter to Citizen Solutions agreeing to perform consulting work for the next three years in exchange for payment to Watchdog of $300,000. On July 11, Citizen Solutions transferred $308,185.50 into Eyman's account.

¶17 VWMC reported to the PDC all payments to Citizen Solutions for signature gathering, and also reported in-kind contributions from various business groups that paid Citizen Solutions directly. Neither VWMC nor Eyman reported to the PDC the $308,185 payment from Citizen Solutions to Eyman.

Eyman Loan to Citizens in Charge

¶18 In April 2012, Eyman filed with the secretary of state an initiative to the people that was labeled as I-517. According to its official ballot title, I-517 "would set penalties for interfering with or retaliating against signature-gatherers and petition-signers; require that all measures receiving sufficient signatures appear on the ballot; and extend time for gathering initiative petition signatures." CP at 5. Eyman also formed a political committee called "Protect Your Right to Vote on Initiatives" (PRVI) to advocate on behalf of I-517. Again, Eyman, Mike Fagan, and Jack Fagan were listed in the PDC filings as officers, and Stan Long was listed as treasurer.

¶19 Beginning in July 2012, Watchdog loaned a total of $200,000 in four installments to Paul Jacob at Citizens in Charge to fund the I-517 campaign. The loan was to help get I-517 on the 2013 ballot. Eyman then reached out to potential donors, asking them to make anonymous, tax deductible donations to Citizens in Charge to support I-517.

¶20 Citizens in Charge ultimately paid for signature gathering for I-517 in the aggregate amount of $182,806. PRVI reported this payment as an in-kind contribution. Eyman did not report to the PDC the loan he made to Citizens in Charge to help get I-517 on the ballot.

¶21 Citizens in Charge later made payments totaling $103,000 to Eyman. The payments were made in multiple installments between August 2013 and March 2018, and all but $15,000 was paid after February 2014. Eyman did not report to the PDC the payments he received from Citizens in Charge.

Databar Refund

¶22 Databar is a mail servicing company. Eyman used Databar's services in the past for ballot measure mailings and mailing gifts. In 2017, Databar owed VWMC a refund of $23,008. Instead of making the check payable to VWMC, Databar made the check payable to Watchdog and Eyman kept the money. The Fagans authorized this payment at Eyman's request. But VWMC did not report the fact that the refund went to Eyman, although Eyman testified that he did not learn it was not reported until years later.

Solicitation of Personal Donations

¶23 From 2014 to 2016, Eyman solicited donations from various supporters to him personally. Eyman did not request donations for any specific initiative campaign; he asked only for money to help him and his family. However, he indicated that the personal contributions would allow him to continue to work on initiative campaigns. For example, one solicitation stated that "as long as you continue to support me and my family, I will be able to take on these important battles." Ex. 124.

¶24 Eyman received a total of $837,502 in donations to him personally. Eyman did not report any of these donations to the PDC.

FCPA Lawsuit, Discovery Issues, Partial Summary Judgment

¶25 The PDC conducted an investigation of allegations against Eyman during the period from 2012 to 2015. The PDC referred the matter to the Attorney General's Office (AGO) for enforcement. In March 2017, the State filed a complaint alleging FCPA violations against Eyman individually and as an officer of VWMC, PRVI and Watchdog; William Agazarm; and Citizen Solutions. The State later filed an amended complaint to add allegations regarding Eyman's solicitations of personal donations.

¶26 In December 2017, the trial court granted the State's motion to compel discovery and ordered Eyman to provide answers and responses to the State's first set of discovery. In March 2018, the court found Eyman in contempt for failing to comply with the December 2017 order and imposed a $250 daily penalty until discovery responses were provided. In August 2019, the court increased the daily penalty to $500 when Eyman still failed to comply with discovery requests. The court found Eyman in contempt again for failing to respond to additional discovery requests.

¶27 On September 13, 2019, the trial court granted the State's motion for nonmonetary discovery sanctions against Eyman. In its order, the trial court stated that Eyman had willfully and deliberately violated the discovery rules and court orders, and the court found that the State's ability to prepare for trial had been prejudiced by Eyman's failure to provide discovery. The court stated that it had considered and imposed lesser sanctions, but those lesser sanctions had failed to induce Eyman to properly respond to discovery. Therefore, a greater sanction was warranted.

¶28 The trial court imposed as a discovery sanction under CR 37(b)(2)(A) that payments to Eyman totaling $766,447 "are hereby found to be 'contributions' in support of ballot propositions as defined by RCW 42.17A.005 and not gifts. That matter is established for the purposes of this action and requires no further proof by the State." CP at 1797.

¶29 The State then moved for partial summary judgment, arguing that Eyman violated the FCPA by failing to register as a political committee and failing to report $766,447 he had received that the trial court previously had deemed contributions in support of ballot propositions. The trial court granted the motion, concluding that Eyman (1) was a "continuing political committee" under RCW 42.17A.005, (2) had failed to register as a political committee, (3) had failed to report $766,447 in contributions that the court previously found were in support of ballot propositions, (4) had failed to file monthly contribution and expenditure reports, and (5) had concealed $766,447 in contributions in violation of RCW 42.17A.435.

¶30 The trial court subsequently rejected several attempts by Eyman to vacate the nonmonetary sanction order and the partial summary judgment order. Eyman filed a petition for discretionary review with the Supreme Court regarding the trial court's denial of his motion to vacate both orders. The Supreme Court Commissioner denied the petition.

Trial Court Ruling

¶31 Following a nine day trial, the trial court found that Eyman violated the FCPA and issued lengthy findings of fact and conclusions of law and an injunction.

¶32 The court entered the following conclusions of law regarding FCPA violations:

> 3.1 As an officer of VWMC, the proponent of I-1185, Defendant Eyman violated the FCPA twice by having the committee make two separate payments to Citizen Solutions, LLC and reporting that the purpose of the payments was to pay for signature gathering, when in fact they were to compensate Defendant Eyman. Each instance of concealment, and each violation carries a maximum penalty of $10,000 for a total of **$20,000.**

CP at 4962.

> 3.2 Eyman accepted a payment from Citizen Solutions, LLC totaling $308,185.50. That payment was comprised of political contributions paid to Citizen Solutions, LLC, and were given to Defendant Eyman for his personal use. Defendant Eyman failed to report and actively concealed the true purpose of the payment, which was his personal use of those

funds, in violation of RCW 42.17A.235, .240, .435, and .445. The law permits a penalty equal to that amount under RCW 42.17A.750(1)(g), for a total of **$308,185.50,** in addition to the penalties above.

CP at 4962.

3.3 On four occasions, Defendant Eyman made concealed contributions to the I-517 campaign by making those payments to Citizens in Charge with the intent that they be spent on I-517 signature gathering without revealing the source of the funds. Each of those instances constituted concealment, which is a violation of the FCPA, and each violation carries a maximum penalty of $10,000, for a total of **$40,000,** in addition to the penalties above. RCW 42.17A.750(1)(c).

CP at 4962.

3.4 The four contributions to the I-517 campaign made by Defendant Eyman were concealed in violation of RCW 42.17A.235, .240, and .435. The amount of those contributions actually expended on the I-517 campaign, which was not reported as required and was actively concealed, totaled $182,806. The law permits a possible penalty equal to that amount under RCW 42.17A.750(1)(g), for a total of **$182,806,** in addition to the penalties above.

CP at 4963.

3.5 Defendant Eyman received $103,000 in loan repayments from Citizens in Charge, which were given to Citizens in Charge Foundation as contributions to the I-517 campaign and then transferred to Citizens in Charge before being paid to Defendant Eyman. The sources of the contributions that funded the $103,000 in payments were not reported as required and were actively concealed in violation of RCW 42.17A.235, .240, .435. The law permits a possible penalty equal to that amount under RCW 42.17A.740(1)(g), for a total of **$103,000,** in addition to the penalties above.

CP at 4963.

3.6 Defendant Eyman is a continuing political committee, as that term is defined under RCW 42.17A.005. The law permits a maximum penalty for his failure to register as a political committee of **$10,000** in addition to the penalties above. RCW 42.17A.750(1)(c).

CP at 4963.

3.7 As of the first day of trial, November 16, 2020, Defendant Eyman's registration as a political committee is 2,975 days late. The law permits a penalty of $10 per day his registration is late, for a total possible penalty of **$29,750,** in addition to the penalties above. RCW 42.17A.750(1)(e).

CP at 4963.

3.8 Defendant Eyman received reportable contributions in support of ballot propositions in 58 months. For each month Defendant Eyman concealed contributions to himself in support of ballot propositions the law permits a maximum penalty of $10,000, for a total penalty of **$580,000** in addition to the penalties above. RCW 42.17A.750(1)(c).

CP at 4963.

3.9 The concealed contributions received by Defendant Eyman and expended for his personal use totaled $837,502, which includes the $766,447 this court previously found as a discovery sanction and an additional $71,005 this court found as a matter of fact at trial. All of these funds were received to further his work on and in support of ballot propositions. The amounts and sources of these contributions were not reported as required and were actively concealed in violation of RCW 42.17A.235, .240, and .435. The law permits a penalty equal to the amount concealed under RCW 42.17A.750(1)(g), for a total possible penalty of **$837,502** in addition to the penalties above.

CP at 4964.

> 3.10 Defendant Eyman misappropriated $23,008.93 from his own committee VWMC in the form of a refund a campaign vendor, Databar, Inc. owed to VWMC, which was paid to Defendant Eyman instead of VWMC. That refund was for funds paid to Databar, Inc. by VWMC out of political contributions. Instead of returning those funds to VWMC, they were paid to Defendant Eyman for his personal use. Defendant Eyman failed to report these funds as required and actively concealed his personal use of them in violation of RCW 42.17A.235, .240, .435, and .445. The law permits a penalty equal to that amount under RCW 42.17A.750(1)(g), for a total of **$23,008.93,** in addition to the penalties above.

CP at 4964.

> 3.11 Defendant Eyman was required to file monthly C-3 and C-4 reports for contributions he personally received. He failed to file 124 reports. For each of these unfiled reports the law permits a maximum penalty of $10,000, for a total possible penalty of **$1,240,000,** in addition to the penalties above.

CP at 4964.

> 3.12 As of the first day of trial, November 6, 2020, Defendant Eyman's combined unfiled reports were a combined 212,491 days late. The law permits a penalty of $10 per day his reports were late, for a total possible penalty of **$2,124,910** in addition to the penalties above. RCW 42.17A.750(1)(e).

CP at 4964-65.

¶33 The trial court concluded that the "total potential base penalty in this matter, as listed above, is at least **$5,754,987.43.**" CP at 4965. And given Eyman's history and experience with the FCPA, and his past violations, the court found that "this matter warrants the maximum penalty against Defendant Eyman for each of the violations described above, though the maximum penalty is not assessed here." CP at 4967.

¶34 The court concluded,

> [I]t would be difficult for the Court to conceive of a case with misconduct that is more egregious or more extensive than the misconduct committed by Defendant Eyman in this matter. As a result of Defendant Eyman's numerous and blatant violations of the FCPA, the Court hereby assesses a penalty of $2,601,502.81 against Defendant Eyman individually.

CP at 4967.

¶35 The court declined to assess additional penalties:

> This Court has considered these additional penalties and has intentionally not included these additional penalties, though they are warranted here as described above. Because there have been so many violations the maximum penalty allowed by law could reach a number that is so large that it is excessive even under the most egregious of cases, which is this case, so the penalty amount has been reduced to the number indicated above.

CP at 4967. And the court declined to treble damages as allowed under RCW 42.17A.780.

¶36 The court also issued an injunction with a number of provisions, including that Eyman was enjoined from engaging in the following activities:

1. "[M]isleading contributors or potential donors directly or indirectly as to why they should donate to a political committee or how any contributions will be spent." CP at 4969.

2. "[R]eceiving 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." CP at 4969.

3. Failing to "report, in compliance with the FCPA, any gifts, donations, or any other funds Defendant Eyman receives directly or indirectly" with certain exceptions. CP at 4969.

4. "[M]anaging, controlling, negotiating, or directing financial transactions of any kind for any Committee, as that term is defined by RCW 43.17A.005, in the future." CP at 4969-70.

¶37 In addition, the trial court required Eyman to comply with a number of other provisions, including:

> 9. Defendant Eyman shall not directly solicit contributions for himself or his family to support his political work without establishing a political committee, which must properly report the contributions to the PDC in compliance with FCPA. Any contributions must be made directly to the political committee, not directly to Defendant Eyman.

CP at 4970.

¶38 The trial court subsequently entered a judgment against Eyman for the $2,601,502.81 in civil penalties and $2,795,198.58 in attorney fees and $96,486.44 in costs incurred by the State. The judgment incorporated by reference the findings of fact, conclusions of law, and injunction. Eyman filed a motion for reconsideration, which was denied.

¶39 Eyman appealed, seeking direct review with the Supreme Court and a stay of the injunction. The Supreme Court commissioner denied direct review and denied the stay, and transferred the case to this court.

ANALYSIS

A. Procedural Issues

1. Timeliness of Appeal

¶40 The State argues that Eyman's appeal is untimely because he did not appeal the trial court's findings of fact and conclusions of law within 30 days after they were entered. We disagree.

¶41 The trial court entered its findings of fact, conclusions of law, and injunction on February 10, 2021. The State subsequently filed a motion for attorney fees. On April 16, the trial court entered judgment against Eyman for the amount of the civil penalty, attorney fees, and costs. The judgment incorporated by reference the findings of fact, conclusions of law, and injunction. Eyman filed a motion for reconsideration on April 26. The trial court denied this motion on June 15. Eyman appealed to the Supreme Court on July 15.

¶42 A "final judgment" is appealable as a matter of right. RAP 2.2(a)(1). Under RAP 5.2(a), a notice of appeal generally must be filed within 30 days after entry of the trial court's decision that the appellant wants reviewed. However, the appeal deadline is extended until 30 days after an order denying a timely motion for reconsideration. RAP 5.2(e). Eyman's appeal was filed 30 days after the trial court denied his motion for reconsideration.

¶43 The State argues that Eyman was required to file a notice of appeal within 30 days of the trial court's entry of the findings of fact, conclusions of law, and injunction. The State cites to *Denney v. City of Richland*, which held that a summary judgment order is a final, appealable judgment that must be appealed within 30 days regardless of a subsequent attorney fee award. 195 Wn.2d 649, 659, 462 P.3d 842 (2020). The State suggests that the trial court's April 16 judgment did nothing more than award attorney fees, which under *Denney* did not extend the appeal deadline.

¶44 But unlike in *Denney*, the trial court's February 2021 findings of fact, conclusions of law, and injunction was not a final judgment. The final judgment, which incorporated the findings of fact, conclusions of law and injunction, was entered on April 16. We hold that Eyman's appeal was timely.

2. Standing to File Suit

¶45 Eyman argues for the first time in his reply brief that the State does not have standing under the FCPA to address transactions between individual private citizens or financial arrangements between private persons and election vendors. But we generally do not consider arguments raised for the first time in a reply brief. RAP 10.3(c); *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 78 n.20, 322

P.3d 6 (2014) ("To address issues argued for the first time in a reply brief is unfair to the respondent and inconsistent with the rules on appeal."). Therefore, we decline to consider this argument.

3. Statute of Limitations

¶46 Eyman makes a reference to the statute of limitations, which for the FCPA is five years. RCW 42.17A.770. This reference apparently relates to the fact that some of the trial court's findings of fact refer to events that occurred before March 2012, five years before the State filed suit. But none of the FCPA violations that the trial court found involved activities that occurred before March 2012. And the statute of limitations does not preclude a fact finder from considering evidence outside the limitations period in determining whether violations occurred within the limitation period. *See Broyles v. Thurston County*, 147 Wn. App. 409, 434-35, 195 P.3d 985 (2008).

B. Fair Campaign Practices Act

1. FCPA Policies

¶47 Two primary policies underlying the FCPA are "[t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided" and "[t]hat the public's right to know of the financing of political campaigns … far outweighs any right that these matters remain secret and private." RCW 42.17A.001(1), (10).

¶48 To that end, the FCPA provides reporting and disclosure requirements for political committees to report to the PDC all contributions received and expenditures made. RCW 42.17A.235(1)(a); RCW 42.17A.240(2), (7). "The FCPA is an attempt to make elections and politics as fair and transparent as possible; and to accomplish that goal, the act requires candidates, political committees, and lobbyists to disclose their campaign contributions and spending." *State v. Grocery Mfrs. Ass'n*, 198 Wn.2d 888, 892, 502 P.3d 806 (2022) (*GMA* II).

2. Statutory Requirements

¶49 Under former RCW 42.17A.005(37) (2011), a "political committee" means "any person … having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." The term "person" includes an individual. Former RCW 42.17A.005(35). A political committee must file a statement of organization with the PDC. RCW 42.17A.205(1). A political committee also must file reports with the PDC at various intervals that contain certain specified information. RCW 42.17A.235, .240. This information includes the name of each person contributing funds to the committee and the amount of the contribution and all expenditures. RCW 42.17A.240(2), (7).

¶50 The FCPA also prohibits concealing the source of contributions:

> No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

RCW 42.17A.435. The FCPA broadly defines "contribution" to include loans, donations, and payments.

Former RCW 42.17A.005(13)(a)(i).

¶51 Under RCW 42.17A.445, contributions to a political committee can be paid to an individual or expended for the individual's personal use only to reimburse lost earnings, reimburse campaign expenses incurred, and repay loans.

3. Penalties

¶52 RCW 42.17A.750 outlines a number of maximum penalties for various FCPA violations. A person who violates any provision in chapter 42.17A RCW may be subject to a civil penalty of not more than $10,000 for each violation. RCW 42.17A.750(1)(c). A person who fails to timely file a required statement or report may be subject to a civil penalty of $10 per day while the delinquency continues. RCW 42.17A.750(1)(e). A person who fails to report a contribution or expenditure as required may be subject to a civil penalty equivalent to the amount not reported. RCW 42.17A.750(1)(g). The trial court also may treble the amount of the judgment as punitive damages if the violation is intentional. RCW 42.17A.780.

¶53 In addition, the trial court "may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein." RCW 42.17A.750(1)(i).

4. Liberal Construction

¶54 RCW 42.17A.001 states that "the provisions of the [FCPA] shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying." Eyman argues that despite the statute's mandate, the FCPA is a criminal statute that must be strictly construed against the State. But this case involves the imposition of civil penalties under RCW 42.17A.750, not criminal charges.

¶55 The Supreme Court repeatedly has quoted the requirement in RCW 42.17A.001 that the FCPA be liberally construed. *E.g.*, *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 454, 461 P.3d 334 (2020) (*GMA* I); *Utter ex rel. State v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953 (2015). And the Supreme Court has relied on that directive in interpreting FCPA provisions. *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 796, 432 P.3d 805 (2019). Therefore, we must liberally construe rather than strictly construe the FCPA.

C. Standard of Review

¶56 When reviewing a trial court's ruling following a bench trial, we determine whether substantial evidence supports the court's findings of fact and whether the findings support the conclusions of law. *Real Carriage Door Co. ex rel. Rees v. Rees*, 17 Wn. App. 2d 449, 457, 486 P.3d 955, *review denied*, 198 Wn.2d 1025 (2021). Substantial evidence supports a finding if it is sufficient to persuade a rational, fair-minded person that the finding is true. *Id.* We view the evidence in the light most favorable to the prevailing party, including all reasonable inferences. *Id.* And we do not review the court's assessment of the credibility of witnesses. *Id.*

¶57 We treat unchallenged findings of fact as verities on appeal. *Id.* Although Eyman assigns error to all of the trial court's findings of fact, his briefs present no argument regarding findings 2.1-2.17, 2.29, and 2.31-2.32. Therefore, these findings are verities on appeal. In addition, Eyman challenges only portions of many of the findings. The portions that are not challenged are treated as verities.

¶58 We review the trial court's conclusions of law de novo. *Conway Constr. Co. v. City of Puyallup*, 197 Wn.2d 825, 830, 490 P.3d 221 (2021). If conclusions of law are mischaracterized as findings of fact, we analyze them as conclusions of law based on a de novo standard. *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012).

D. Payment from Citizen Solutions to Eyman

¶59 Eyman argues that the trial court erred in ruling that he violated the FCPA by having VWMC report that certain payments to Citizen Solutions were for the purpose of signature gathering rather than for

paying Eyman $308,185.50. We disagree.

1. Violations Found by Trial Court

¶60 The trial court concluded that Eyman violated the FCPA by

(1) "having the committee make two separate payments to Citizen Solutions, LLC and reporting that the purpose of the payments was to pay for signature gathering, when in fact they were to compensate Defendant Eyman," which constituted concealment, CP at 4962; and

(2) "accept[ing] a payment from Citizen Solutions, LLC totaling $308,185.50. That payment was comprised of political contributions paid to Citizen Solutions, LLC, and were given to Defendant Eyman for his personal use. Defendant Eyman failed to report and actively concealed the true purpose of the payment, which was his personal use of those funds, in violation of RCW 42.17A.235, .240, .435, and .445." CP at 4962.

2. Challenged Findings of Fact

¶61 Eyman challenges 14 of the trial court's findings of fact regarding the $308,185.50 payment he received from Citizen Solutions as not being supported by substantial evidence or as being conclusions of law.

¶62 After a careful review of the record, we conclude that substantial evidence supports findings 2.18, 2.20, 2.22-2.27, 2.30, and 2.33. We decline to consider the challenges to findings 2.19 and 2.28 because Eyman presents no meaningful argument regarding these findings. *See Billings v. Town of Steilacoom*, 2 Wn. App. 2d 1, 21, 408 P.3d 1123 (2017) (stating that we generally decline to consider an issue when the appellant has failed to provide meaningful argument). Finally, we conclude that findings 2.34 and 2.35, which state that Eyman violated the FCPA, constitute legal conclusions that we analyze de novo below.

¶63 Below in Sections D.2.b-e is a discussion of some of the factual findings most pertinent to the trial court's conclusion that Eyman violated the FCPA regarding the payment from Citizen Solutions.

a. Opportunity to Object

¶64 Initially, Eyman argues that the trial court did not give him an opportunity to object to the findings of fact. CR 52(c) states that "the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions."

¶65 Here, the State submitted the proposed findings on January 6, 2021, the day before the trial court heard closing arguments. At closing argument, the State also presented a template with the proposed language for the injunction. Eyman did not object at that time or after the trial was over to the proposed findings or the injunction. The court entered the findings of fact and conclusions of law on February 10. We reject Eyman's argument.

b. Finding 2.18

¶66 The trial court found in finding 2.18 that Eyman agreed to increase Citizen Solutions' price per signature by $0.50 and then by $1.50 "[i]n furtherance of the conspiracy to fund a kickback to himself." CP at 4947. Eyman argues that the finding that there was a "conspiracy to fund a kickback to himself" is a legal conclusion and that the court made conclusory inferences from factual assertions.

¶67 But why Eyman agreed to the price increases and the purpose for the increases involves a factual determination, not a legal one. And although there may not have been any direct evidence of this kickback conspiracy, as Eyman acknowledges, the court made that inference based on the evidence. On review, we view all inferences from the evidence in the light most favorable to the State. *Real Carriage Door*, 17 Wn. App. 2d at 457. We conclude that substantial evidence supports finding 2.18.

c. Findings 2.22 and 2.23

¶68 The trial court found in finding 2.22 that Eyman attempted to convince contributors to provide donations to fund the $170,000 that VWMC had paid to Citizen Solutions, knowing that Citizen Solutions already had agreed to return the $170,000 and more to Eyman as a kickback. The trial court found in finding 2.23 that "Eyman was engaged in a scheme with Defendant Citizen Solutions … to generate a kickback to himself from the political contributions he was soliciting." CP at 4949.

¶69 Eyman again argues that the finding that he received a kickback is a legal conclusion and is not supported by substantial evidence. But as discussed above, this finding involves a factual determination and is supported by a reasonable inference from the evidence when viewed in the light most favorable to the State. We reject the challenge to finding 2.22 and finding 2.23.

d. Finding 2.25

¶70 The trial court found in finding 2.25 that "Eyman's statements in the June 5, 2012, email showed his awareness that funds being paid to Defendant Citizen Solutions would not be used exclusively to fund signature gathering for I-1185, as was being reported by his committee VWMC, but would be converted to Defendant Eyman's personal use." CP at 4949-50. Eyman argues that substantial evidence does not support the finding that he understood the funds paid to Citizen Solutions would not be exclusively used for signature gathering.

¶71 In the June 5 email, Eyman stated that he was working hard to get an extra $270,000 for himself by getting it paid to Citizen Solutions. He proposed that the $270,000 be paid to Watchdog as a sales commission. Watchdog later was paid $308,185.50. The trial court could infer from this evidence that Eyman knew that some of the money paid to Citizen Solutions would be paid to Eyman. On review, we view all inferences from the evidence in the light most favorable to the State. *Real Carriage Door*, 17 Wn. App. 2d at 457. We conclude that substantial evidence supports finding 2.25.

e. Finding 2.30

¶72 The trial court found in finding 2.30 that Citizen Solutions' $308,185.50 payment to Eyman was a kickback made "with the specific intent to violate the FCPA by concealing from the public the purpose of five expenditures of donor funds to Citizen Solutions, LLC, which were contributed to support I-1185, and to conceal from the public Defendant Eyman's personal use of $308,185.50 in political contributions." CP at 4952. Eyman argues that this finding states a legal conclusion and is not supported by substantial evidence.

¶73 The trial court could infer from the evidence that Eyman intended to violate the FCPA and to conceal his personal use of political contributions. On review, we view all inferences from the evidence in the light most favorable to the State. *Real Carriage Door*, 17 Wn. App. 2d at 457. We conclude that substantial evidence supports finding 2.30.

3. FCPA Analysis

¶74 The trial court's findings of fact, supported by substantial evidence, establish that Citizen Solutions paid Eyman $308,185.50 as a kickback from direct payments Citizen Solutions received from VWMC and

business associations. It is undisputed that VWMC reported these payments to Citizen Solutions as expenditures for signature gathering rather than as expenditures to Eyman. The question is whether this conduct constitutes a violation of the FCPA by Eyman.

a. Improper Reporting of Expenditures by VWMC

¶75 The trial court concluded that Eyman violated the FCPA by having VWMC report that the purpose of the expenditures was to pay for signature gathering when the true purpose was to compensate Eyman, thereby violating reporting requirements, concealing the expenditure to Eyman and improperly paying Eyman with contributions.

¶76 The findings of fact discussed above support the conclusion that VWMC improperly reported the expenditures. The trial court found that Eyman knew that the later payments to Citizen Solutions were to fund a kickback to himself rather than to fund signature gathering. The general rule is that an agent's knowledge is imputed to the principal if the agent has "actual or apparent authority in connection with the subject matter 'either to receive it, to take action upon it, or to inform the principal or some other agent who has duties in regard to it.'" *Denaxas v. Sandstone Ct. of Bellevue, LLC*, 148 Wn.2d 654, 666, 63 P.3d 125 (2003) (internal quotation marks omitted) (quoting *Roderick Timber Co. v. Willapa Harbor Cedar Prods., Inc.*, 29 Wn. App. 311, 317, 627 P.2d 1352 (1981)); *see also Interlake Porsche + Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986) (holding that an officer's knowledge is imputed to the corporation). Here, Eyman was the agent and VWMC was the principal.

¶77 RCW 42.17A.235(1)(a) requires political committees to report all expenditures, and RCW 42.17A.240(7) requires a political committee to report the purpose of each expenditure. VWMC's report of the expenditures to Citizen Solutions, which Citizen Solutions then paid to Eyman as being for the purpose of signature gathering, was improper because of its imputed knowledge that the expenditures actually were for the purpose of compensating Eyman. We conclude that the trial court's findings support the conclusion that *VWMC* violated RCW 42.17A.235(1)(a) and .240(7).

¶78 RCW 42.17A.435 states that "no expenditure shall be incurred" by one person through another person "in such a manner as to conceal the identity of the source of the contribution." Here, the trial court found that VWMC essentially paid Eyman $308,185.50 through another person – Citizen Solutions. In other words, rather than paying that amount directly to Eyman, VWMC concealed the source of the payment by making the payment to Citizen Solutions and then having Citizen Solutions pay Eyman. Again, Eyman's knowledge of the scheme is imputed to VWMC. We conclude that the trial court's findings support the conclusion that *VWMC* violated RCW 42.17A.445.

¶79 RCW 42.17A.445 states that a political committee can make payments to individuals only to reimburse an individual for lost earnings or out-of-pocket expenses or to repay loans. Eyman did not establish or even argue that he was entitled to the $308,185.50 under RCW 42.17A.445. Therefore, we conclude that the trial court's findings support the conclusion that *VWMC* violated RCW 42.17A.445.

b. Eyman's Responsibility for VWMC's Violations

¶80 As discussed above, we conclude that the trial court's findings support the conclusion that VWMC committed FCPA violations with regard to Citizen Solutions' $308,185.50 payment to Eyman. But the trial court concluded that *Eyman*, not VWMC, violated the FCPA by improperly reporting, concealing, and improperly making the payment. Therefore, we must determine whether a political committee's officer can be held responsible for FCPA violations based on the *committee's* FCPA violations. The trial court did not explain why Eyman could be held personally responsible. And neither Eyman nor the State expressly addresses this issue.

¶81 Initially, Eyman had no obligation *as an individual* to report the Citizen Solutions payment. There is no indication that the trial court found that Eyman was a political committee at that time, so the payment was not a "contribution" that he had to report under RCW 42.17A.235(1)(a). Nothing in the FCPA requires an individual (other than a candidate) to report payments received from a political committee. In addition, RCW 42.17A.435 relates only to the concealment of making contributions or expenditures, not concealment of receiving payments from a political committee. Eyman's receipt of the $308,185.50 did not involve the making of a contribution or an expenditure by him.

¶82 Eyman raises this issue by arguing that only the political committee's treasurer has reporting responsibilities under the FCPA. We treat this as an argument that an officer of a political committee cannot be held responsible for the committee's FCPA violations.

¶83 Eyman's claim that only a political committee's treasurer has a reporting obligation is incorrect. RCW 42.17A.235(1)(a) states that "each candidate or *political committee* must file with the commission a report of all contributions received and expenditures made as a political committee on the next reporting date pursuant to the timeline established in this section." (Emphasis added.) In other words, the political committee has the obligation to file the required reports.

¶84 However, Eyman is correct that a political committee must appoint a treasurer, RCW 42.17A.210(1), and the FCPA identifies the treasurer as the person responsible for certifying and filing the political committee's reports. RCW 42.17A.225(6) (stating that the treasurer shall certify all reports as correct); RCW 42.17A.235(2), (6) (stating that each political committee's treasurer must file the reports containing the information required under RCW 42.17A.240 at certain intervals and that the treasurer must maintain books reflecting all contributions and expenditures); RCW 42.17A.240 (stating that the information required to be disclosed under that statute must be certified by the treasurer). And no FCPA provisions state that an officer of the political committee is responsible for filing reports.

¶85 Nothing in the FCPA expressly provides that the trial court has authority to hold a political committee officer responsible for a committee's reporting violation, concealment, or improper payment. And no case holds that a trial court has such authority. However, RCW 42.17A.750(1)(c), (e) and (g) state that "a person" – not only a candidate or a political committee – who violates the FCPA is subject to civil penalties. The term "person" includes an individual. Former RCW 42.17A.005(35). Therefore, RCW 42.17A.750(1) can be liberally construed as providing authority to hold a political committee officer responsible for the committee's FCPA violations.

¶86 Here, Eyman was the person who orchestrated this entire scheme. The trial court's findings establish that he knew that the later payments VWMC was making to Citizen Solutions were for the purpose of compensating him rather than for gathering signatures. Therefore, he knew that (1) VWMC's reporting of expenditures was incorrect in violation of RCW 42.17A.235(1)(a) and .240(7); (2) VWMC was concealing the expenditure to himself by making payments to Citizen Solutions in violation of RCW 42.17A.435; and (3) VWMC was making an improper payment to an individual in violation of RCW 42.17A.445. Further, Eyman was listed in VWMC's registration papers as one of the persons authorized to make decisions for the committee. In other words, Eyman – not VWMC – was the actual person who was violating the FCPA.

¶87 The legislature has directed courts to liberally construe FCPA provisions. RCW 42.17A.001. In light of this directive and under the specific, unique facts of this case, we hold that Eyman can be charged with VWMC's violations of the FCPA with regard to the $308,185.50 payment.

¶88 Accordingly, we affirm the trial court's conclusion that Eyman violated the FCPA with regard to the $308,185.50 payment from Citizen Solutions to him, resulting in maximum penalties of $20,000 for two improper reports and $308,185.50 for the amount Citizen Solutions paid to him.

E. Eyman's "Loan" to Citizens in Charge

¶89 Eyman argues that the trial court erred in ruling that he violated the FCPA by concealing a donation to the I-517 campaign through the $200,000 "loan" he made to Citizens in Charge and by failing to report the $103,000 payment he subsequently received from Citizens in Charge. We disagree regarding the loan but agree regarding the payment.

1. Violations Found by Trial Court

¶90 The trial court concluded that Eyman violated the FCPA by

(1) "[making] concealed contributions to the I-517 campaign by making those payments to Citizens in Charge with the intent that they be spent on I-517 signature gathering without revealing the source of the funds," CP at 4962; and

(2) "receiv[ing] $103,000 in loan repayments from Citizens in Charge, which were given to Citizens in Charge Foundation as contributions to the I-517 campaign and then transferred to Citizens in Charge

before being paid to Defendant Eyman. The sources of the contributions that funded the $103,000 in payments were not reported as required and were actively concealed," CP at 4963.

2. Challenged Findings of Fact

¶91 Eyman challenges 10 findings of fact regarding his $200,000 loan to Citizens in Charge and the $103,000 payment from Citizens in Charge as not being supported by substantial evidence or as being conclusions of law.

¶92 After a careful review of the record, we conclude that substantial evidence supports findings 2.36-2.39, much of finding 2.40, the first sentence of 2.41, the second and third sentences of finding 2.42, and finding 2.43. We conclude that substantial evidence does not support the finding in 2.40 that others did in fact make contributions to Citizens in Charge in support of I-517, and the second and third sentences of finding 2.41. We conclude that the last sentence of finding 2.40 and the first sentence of finding 2.42, finding 2.44 and finding 2.45 constitute legal conclusions that we analyze de novo below.

¶93 However, we do not need to extensively analyze the findings regarding the $200,000 loan issue because the key facts are undisputed. Eyman does not challenge the findings in 2.39 and 2.42 that he made $200,000 in payments to Citizens in Charge or the finding in 2.44 that Citizens in Charge contributed $182,806 to the I-517 campaign. Instead, he argues that these transactions did not violate the FCPA.

¶94 The findings not supported by substantial evidence relate to the $103,000 payment. These findings are discussed in Section E.4 below.

3. FCPA Analysis – Eyman Loan

¶95 The trial court's findings of fact, supported by substantial evidence, establish that Eyman paid $200,000 in four installments to Citizens in Charge to fund signature gathering for I-517, Citizens in Charge provided $182,806 for I-517 signature gathering, and Eyman did not report his payment to Citizens in Charge.

¶96 The trial court concluded that Eyman's payments to Citizens in Charge violated RCW 42.17A.235 and .240, which require that political committees report to the PDC all contributions received and expenditures made. But Eyman personally made these payments, and there is no indication that the trial court believed that Eyman qualified as a political committee at that time. Therefore, these two statutes did not require Eyman to report his payments to the PDC. We conclude that the trial court erred in ruling that Eyman violated RCW 42.17A.235 and .240.

¶97 However, the trial court also concluded that Eyman's payments to Citizens in Charge violated RCW 42.17A.435. That statute states that no "contribution" shall be made through another person "in such a manner as to conceal the identity of the source of the contribution." RCW 42.17A.435. The trial court's findings of fact establish that Eyman made contributions to the I-517 campaign through another person – Citizens in Charge – and thereby concealed the source of those contributions. And the findings show that the amount of these concealed contributions that were made to the I-517 campaign through Citizens in Charge was $182,806.

¶98 Accordingly, we affirm the trial court's conclusion that Eyman's $200,000 payment to Citizens in Charge violated RCW 42.17A.435, resulting in maximum penalties of $40,000 for the four payments and $182,806 for the amount contributed by Citizens in Charge.

4. FCPA Analysis – Payment to Eyman

¶99 The trial court's conclusion that Eyman was required to report the $103,000 payment from Citizens in Charge to him was based on the trial court's findings (1) in finding 2.40, that others in fact made contributions to support 1-517 through Citizens in Charge; and (2) in finding 2.41, that contributions to Citizens in Charge to support I-517 funded the payment.

¶100 The trial court found in finding 2.40 that "Eyman encouraged others to make contributions to support I-517, specifically promising anonymity, and *they in fact did make concealed contributions to support I-517* by laundering their contributions through Citizens in Charge Foundation." CP at 4955 (emphasis added). The court then referenced two emails in which Eyman solicited contributions to Citizens in Charge.

¶101 However, although Eyman clearly solicited donations to Citizens in Charge, the State points to no evidence that people actually made donations to Citizens in Charge to support I-517. The State cites to exhibits 106, 164 and 166, but none of these exhibits show payments from donors to Citizens in Charge in support of I-517. Therefore, we conclude that substantial evidence does not support that finding.

¶102 Finding 2.41 states,

> Evidence at trial demonstrated that from August 2013 through October 2018, Defendant Eyman received $103,000 in payments from Citizens in Charge. Though he steered the sources of those funds to Citizens in Charge, Defendant Eyman failed to disclose the true sources of the payments as contributions to the I-517 campaign. This Court finds that the payments made to Citizens in Charge and its foundation to repay Defendant Eyman's loan were in fact contributions to support the I-517 campaign.

CP at 4955.

¶103 However, the State points to no evidence that the money Citizens in Charge paid to Eyman came from I-517 donations. As discussed above, there is no evidence that donors actually made contributions to Citizens in Charge to support I-517. In addition, a large majority of the payments were made from 2014 through 2018, long after I-517 was on the ballot in November 2013. Eyman received only $15,000 in 2013. Therefore, we conclude that substantial evidence does not support finding 2.41.

¶104 Substantial evidence does not support the factual findings supporting the trial court's legal conclusion that the failure to report the $103,000 payment violated the FCPA. Accordingly, we conclude that the trial court erred in ruling that Eyman violated the FCPA by not reporting the $103,000 payment from Citizens in Charge and that Eyman was subject to a maximum penalty of $103,000 relating to that payment. 4

F. Databar Refund Paid to Eyman

¶105 Eyman argues that the trial court erred in ruling that he violated the FCPA by failing to report to the PDC the $23,008.93 refund he received from Databar. We disagree.

1. Violation Found by the Trial Court

¶106 The trial court concluded that Eyman violated the FCPA by (1) having a refund Databar owed to VWMC, which was for funds paid to VWMC out of political contributions, paid to himself for his personal use; and (2) failing to report these funds as required and concealing his personal use of them in violation of RCW 42.17A.235, .240, .435, and .445.

2. Challenged Finding of Fact

¶107 Finding 2.60 states in part,

> Defendant Eyman testified that mailing service company Databar, Inc. owed a $23,008.93 refund to Voters Want More Choices ("VWMC") in 2017. Rather than directing the refund of that amount from the vendor to his political committee, he testified that he asked for the funds to be paid directly to his own company, Defendant Watchdog. He then transferred the money out of Watchdog's account and into his own account. The expenditure of these funds

> to Defendant Eyman was not reported to the PDC as required. Defendant Eyman admitted at trial that he made personal use of these funds that belonged to his political committee.

CP at 4960.

¶108 Eyman argues that this finding is not supported by substantial evidence. He claims that this amount was paid to him by the committee for amounts owed to him, and that he tried to report the payment but PDC rejected his report. [5] However, the finding states facts that Eyman does not dispute – that the refund from Databar was paid to him for his personal use and the payment was not reported to PDC. The fact that Eyman may have provided an explanation for the failure to report does not affect the validity of this finding. We conclude that substantial evidence supports the portion of finding 2.60 quoted above.

3. FCPA Analysis

¶109 VWMC had a duty under RCW 42.17A.235(1) and .240(7) to report all expenditures. The refund that went to Eyman rather than to VWMC constituted an expenditure, but VWMC did not report this payment. Eyman claims that he tried to have VWMC's treasurers report the payment and tried to report it himself. But the fact that Eyman may have had an explanation for why the expenditure was not reported does not mean that there was no statutory violation. And as an officer, he had the authority to direct VWMC to make this report. We conclude that the trial court's finding supports the conclusion that *VWMC* violated RCW 42.17A.235(1) and .240(7).

¶110 The trial court also concluded that Eyman violated RCW 42.17A.435, which prohibits concealment of expenditures. Here, VWMC made an expenditure to Eyman indirectly through Databar in a manner that concealed the fact that the money actually was coming from VWMC. We conclude that the trial court's finding supports the conclusion that *VWMC* violated RCW 42.17A.435.

¶111 Finally, the court found a violation of RCW 42.17A.445, which states that a political committee can make payments to individuals only under certain circumstances. Eyman claims that the payment was to compensate him for amounts owed from the committee, but he provides no record cite for this claim. We conclude that the trial court's finding supports the conclusion that *VWMC* violated RCW 42.17A.445.

¶112 Again, neither the trial court nor the State explains why a political committee's officer can be personally charged with an FCPA violation when the committee fails to report or makes an improper payment. But as discussed above, we conclude that under the specific facts of this case, Eyman can be held responsible for VWMC's FCPA violations because he directed this transaction and he – not VWMC – was the actual person who was violating the FCPA.

¶113 We hold that the trial court did not err in concluding that Eyman violated RCW 42.17A.235, .240, and .445 with regard to the Databar refund, resulting in a maximum penalty of $23,008.93.

G. Eyman's Receipt of Personal Contributions

¶114 Eyman argues that the trial court erred in ruling that he was a continuing political committee as defined in former RCW 42.17A.005(12) and therefore violated reporting duties under the FCPA. We conclude that Eyman fell within the definition of both "political committee" and "continuing political committee."

1. Legal Principles

¶115 Former RCW 42.17A.005(37) defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." "Person" is defined broadly and includes "an individual" and "any other organization or group of persons, however organized." Former RCW 42.17A.005(35).

¶116 A person can become a political committee in two ways: "'(1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.'" *GMA* I, 195 Wn.2d at 455 (internal quotation marks omitted) (quoting *Utter*, 182 Wn.2d at 415). These are known as the contribution prong and the expenditure prong. *GMA* I, 195 Wn.2d at 455.

¶117 "[T]he 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.* at 457 (quoting former RCW 42.17A.005(40)). The expenditure prong applies only to entities that have a primary purpose of supporting or opposing candidates or ballot propositions. *GMA* I, 195 Wn.2d at 455.

¶118 Former RCW 42.17A.005(12) defines "continuing political committee" as "a *political committee* that is an organization of continuing existence not established in anticipation of any particular election campaign." (Emphasis added.) No cases have addressed what constitutes a continuing political committee.

2. Discovery Sanction Order

¶119 The trial court's September 13, 2019 nonmonetary sanction order deemed that $766,447 in personal donations Eyman received were "'contributions' in support of ballot propositions as defined by RCW 42.17.005." CP at 1797. If we affirm this order, we necessarily must conclude that Eyman was a political committee as defined in former RCW 42.17A.005(37).

¶120 Eyman argues that the trial court's discovery sanction order should be reversed because (1) deeming that the personal contributions he received were contributions in support of ballot propositions is a legal conclusion that is an inappropriate sanction under CR 37(b)(2)(A), and (2) the trial court erred in applying the factors stated in *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997). We assume without deciding that the trial court erred in imposing the nonmonetary sanction under CR 37(b)(2)(A). Therefore, we will address the personal contribution issue on the merits.

3. Partial Summary Judgment Order

¶121 The trial court determined in its partial summary judgment order that Eyman was a continuing political committee. Eyman assigns error to this order but only briefly addresses it.

¶122 In general, we will affirm a summary judgment order if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Mihalia v. Troth*, 21 Wn. App. 2d 227, 231, 505 P.3d 163 (2022); CR 56(c). Eyman does not suggest that there are material issues of fact regarding whether he is a continuing political committee. Instead, he argues that receiving donations to pay for his personal expenses does not make him a continuing political committee as a matter of law. This argument is discussed below.

4. Violations Found by Trial Court

¶123 The trial court concluded that Eyman was a continuing political committee as defined in RCW 42.17A.005. The court concluded that Eyman (1) failed to register as a political committee for 2,975 days, (2) did not report and concealed contributions to himself in support of ballot propositions for 58 months in the amount of $837,502, and (3) failed to file 124 monthly C-3 and C-4 reports for a combined 212,491 days.

5. Challenged Findings of Fact

¶124 Eyman challenges nine of the trial court's findings of fact regarding the court's determination that he was a continuing political committee as not being supported by substantial evidence or as being conclusions of law.

¶125 After a careful review of the record, we conclude that substantial evidence supports findings 2.46, 2.51, 2.53-2.55, 2.57, portions of 2.56, and 2.59. We conclude that portions of findings 2.56 and 2.58, which conclude that the personal donations Eyman received were contributions in support of ballot measures as defined by RCW 42.17A.005, constitute legal conclusions that we analyze de novo below.

¶126 However, we do not need to extensively analyze the findings regarding the personal contributions Eyman received because the keys facts are undisputed. Eyman does not challenge the finding in 2.56 that the received over $835,000 in personal contributions. And he does not challenge the findings in 2.48 and 2.50 that he solicited the contributions to allow him to continue working on ballot initiatives.

¶127 A key challenged finding is finding 2.46, which states,

> From 2013-2018 Defendant Eyman continued to solicit and accept concealed payments from thousands of sources. The payments were *cast as compensation to Defendant Eyman for his work on initiative campaigns*, tax-deductible donations to Citizens in Charge earmarked for the benefit of Defendant Eyman and his family, and even as fraudulent charges for consulting work that Defendant Eyman did not perform. *He made all of these solicitations with the expectation of receiving funds to further his work on ballot propositions*.

CP at 4956-57 (emphasis added).

¶128 Eyman challenges the finding that he solicited and accepted donations as compensation for his work on initiative campaigns and to further that work. But substantial evidence supports this finding. 6 Eyman's solicitations touted his previous work on initiative campaigns and indicated that the personal donations were necessary for him to continue that work. For example, Eyman did not challenge finding 2.48, which quoted an email Eyman sent to dozens of supporters stating that "as long as you continue to support me and my family, I will be able to take on these important battles." CP at 4957. And Eyman does not challenge finding 2.50, which quoted an email Eyman sent to a supporter asking for a contribution for passing an initiative the previous year and for working on upcoming ballot initiatives.

6. Continuing Political Committee Analysis

¶129 Eyman argues that he cannot be characterized as a continuing political committee because (1) he is not a "political committee" because he did not receive contributions "in support of ballot propositions" as required under former RCW 42.17A.005(37); and (2) he is not a continuing political committee because he is not an "organization" as required under former RCW 42.17A.005(12). We disagree.

a. Statutory Interpretation

¶130 As discussed above, whether the type of contributions Eyman received are "in support of ballot propositions" requires an interpretation of former RCW 42.17A.005(37), and statutory interpretation is a question of law. *Ekelmann v. City of Poulsbo*, 22 Wn. App. 2d 798, 807, 513 P.3d 840 (2022). We review de novo questions of statutory interpretation. *Id.*

¶131 Our goal in interpreting statutory language is to ascertain and give effect to the legislature's intent. *Id.* In making this determination, "[w]e consider the language of the statute, the context of the statute, related statutes, and the statutory scheme as a whole." *Id.* Undefined words in statutes must be given their plain and ordinary meaning. *Clark County v. Portland Vancouver Junction R.R., LLC*, 17 Wn. App. 2d 289, 295, 485 P.3d 985 (2021). We may refer to dictionary definitions to determine that plain meaning. *Id.*

¶132 A term is ambiguous if it is susceptible to two reasonable meanings. *Id.* "We resolve ambiguities by considering other indications of legislative intent, including principles of statutory construction, the legislative history of the statute, and relevant case law." *Id.* "Where two interpretations of statutory language are equally reasonable, our canons of construction direct us to adopt 'the interpretation which

better advances the overall legislative purpose.'" *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 729, 406 P.3d 1149 (2017) (quoting *Weyerhaeuser Co. v. Dep't of Ecology*, 86 Wn.2d 310, 321, 545 P.2d 5 (1976)).

¶133 Regarding interpretation of the FCPA, we also must adhere to the legislature's directive that FCPA provisions "shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns." RCW 42.17A.001.

b. Definition of Political Committee

¶134 Former RCW 42.17A.005(12) defines a "continuing political committee" as a "political committee" of continuing existence. Therefore, Eyman can be a continuing political committee only if he also is a political committee.

¶135 As noted above, former RCW 42.17A.005(37) defines "political committee" to include a person "having the expectation of receiving contributions … in support of … any ballot proposition." Eyman argues that he is not a political committee because he did receive contributions "in support of … any ballot proposition." Former RCW 42.17A.005(37). Instead, Eyman argues that he had the expectation of receiving contributions only to support him and his family. We disagree.

i. Solicitation for Earlier Campaigns

¶136 The State initially argues that Eyman is a political committee because he solicited contributions in support of I-1185 and I-517. But Eyman solicited contributions to the campaign committees, not to himself. The FCPA cannot be interpreted as requiring every person who solicits contributions to a campaign committee to register as a political committee. The issue here is whether Eyman's receipt of personal contributions *to himself* makes him a political committee.

ii. Direct vs. Indirect Support

¶137 Eyman's argument essentially is that a political committee is formed only if there is an expectation of receiving contributions that will be used to provide *direct* support to a ballot proposition. He asserts that to be a political committee, a person must actually use the contributions to support a ballot proposition. Examples of direct support would be paying for signature gathering or campaign advertising. He refers to the statement in *GMA* I that an entity constitutes a political committee if it expects to receive contributions "to be spent in elections." 195 Wn.2d at 457.

¶138 The State argues that the definition of political committee includes the expectation of receiving contributions that will provide *indirect* support to ballot propositions. Such support would include paying for Eyman's living expenses so he can continue working full time on ballot propositions.

¶139 No case has addressed whether the "support" referenced in former RCW 42.17A.005(37) includes indirect support. The statement in *GMA* I that Eyman references is not directly applicable because the court was addressing organizations funded with contributions that exist for purposes other than pursuing electoral goals. 195 Wn.2d at 457. The court noted that the fact that such organizations potentially could spend donated funds in elections does not make them political committees. *Id.*

¶140 The interpretation that the term "support" in former RCW 42.17A.005(37) is limited to direct support and the interpretation that the term includes the type of indirect support at issue here both are reasonable. Therefore, we conclude that the term "support" is ambiguous. This means that we must consider the legislative intent, *Portland Vancouver Junction R.R.*, 17 Wn. App. 2d at 295, and determine which interpretation better advances the legislature's purpose in enacting the FCPA, *Wright*, 189 Wn.2d at 729.

¶141 As noted above, two primary policies underlying the FCPA are "[t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided" and "[t]hat the public's right to know of the financing of political campaigns … far outweighs any right that these matters remain secret and private." RCW 42.17A.001(1), (10). The purpose of the FCPA is "'to

ferret out … those whose purpose is to influence the political process and subject them to the reporting and disclosure requirements of the act in the interest of public information.'" *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 480, 166 P.3d 1174 (2007) (alteration in original) (quoting *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508, 546 P.2d 75 (1976)). "The FCPA is an attempt to make elections and politics as fair and transparent as possible." *GMA* II, 198 Wn.2d at 892.

¶142 Providing a broader definition of "support," and therefore of "political committee," is consistent with legislative intent and better advances the legislature's purpose in enacting the FCPA. In addition, we must liberally construe FCPA provisions. RCW 42.17A.001. This liberal construction also would support a broader definition of "support" and "political committee." Therefore, we conclude that the definition of "political committee" includes a person who expects to receive contributions that will indirectly support any ballot proposition.

¶143 Here, it is undisputed – and the trial court so found – that Eyman solicited and received contributions to pay his living expenses so he could continue working on ballot propositions. These contributions provided indirect support to the ballot propositions on which Eyman worked. Therefore, we hold that Eyman met the definition of "political committee" with regard to the $837,502 in personal donations he received.

c. Definition of Continuing Political Committee

¶144 Eyman argues that even if he was a political committee, he was not a *continuing* political committee because he is an individual, not an "organization" as required in former RCW 42.17A.005(12). He asserts that the term "organization" does not include an individual. We disagree.

¶145 Former RCW 42.17A.005(37) defines "political committee" as a "person," which includes an individual. But former RCW 42.17A.005(12) defines a "continuing political committee" not as a person but as an "organization." The use of the term "organization" in former RCW 42.17A.005(12) suggests that the legislature intended that the definition of "continuing political committee" would not include any "person." "When the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings." *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007).

¶146 The FCPA does not define "organization." But the plain meaning of the term does not include a single individual. *See* Webster's Third New International Dictionary 1590 (2002) (defining "organization" as "a group of people"). Therefore, Eyman's argument that he individually cannot be a continuing political committee is reasonable.

¶147 However, as stated above, Eyman's receipt of personal contributions made him a political committee. As a result, he no longer was merely an individual – he was a *committee*. The plain meaning of organization includes a committee. For example, under RCW 42.17A.205(1), a political committee must file a "statement of organization" with the PDC. Therefore, the conclusion that an individual who constitutes a political committee can constitute an organization and therefore a continuing political committee also is reasonable.

¶148 Once again, providing a broader definition of "organization" and therefore of "continuing political committee" is consistent with legislative intent and better advances the legislature's purpose in enacting the FCPA. In addition, we must liberally construe FCPA provisions. RCW 42.17A.001. This liberal construction also would support a broader definition of "organization" and "continuing political committee." Therefore, we conclude that Eyman as a political committee met the definition of "continuing political committee."

¶149 Accordingly, we conclude that Eyman falls within the definition of "continuing political committee" in former RCW 42.17A.005(12).

7. Reporting Obligations

¶150 As a political committee, Eyman had a statutory obligation to file a statement of organization, RCW 42.17A.205(1), and report all contributions and expenditures, RCW 42.17A.235(1)(a). And as a continuing political committee, Eyman was required to file and report on the same conditions and at the same times as a political committee. RCW 42.17A.225(1).

¶151 Eyman did not register and did not report any of the personal contributions that he received. Therefore, we hold that the trial court did not err in concluding that Eyman violated the FCPA with regard to those contributions, resulting in maximum penalties of $10,000 for the failure to register, $29,750 for late registration, $580,000 for the continuing failure to report contributions, $857,502 for the amount not reported, $1,240,000 for the failure to file monthly C-3 and C-4 reports, and $2,124,910 for the continuing failure to file reports.

H. Constitutional Claims

¶152 Eyman argues that the FCPA is unconstitutional as applied to him because it (1) unconstitutionally requires him to disclose the identity of charitable donors, and (2) subjects him to unconstitutionally oppressive reporting requirements. We disagree.

1. Legal Principles

¶153 The FCPA's reporting and disclosure requirements are subject to exacting scrutiny, not strict scrutiny. *GMA* I, 195 Wn.2d at 461. Under the exacting scrutiny analysis, there must be a "'substantial relation'" between the statutory requirement and a "'sufficiently important'" governmental interest. *Id.* (internal quotation marks omitted) (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366-67, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)).

¶154 "It has already been held that the FCPA's registration and disclosure requirements for political committees survive exacting scrutiny on their face 'because the [FCPA]'s somewhat modest political committee disclosure requirements are substantially related to the government's interest in informing the electorate.'" *GMA* I, 195 Wn.2d at 461-62 (alteration in original) (quoting *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1014 (9th Cir. 2010)). Therefore, Eyman is limited to an as-applied challenge. *See id.* at 462.

¶155 In an as-applied challenge, "the State's interest in disclosure is ordinarily sufficient to survive exacting scrutiny." *GMA* I, 195 Wn.2d at 464. However, the court in *GMA* I recognized the line of cases allowing as-applied challenges if the disclosure of donors' identities probably would subject them to threats or harassment. *Id.*

2. Disclosure of Donors

¶156 Eyman argues that he has a First Amendment right to solicit and use charitable donations without disclosing the names of the donors, and the FCPA's requirement that a political committee disclose the source of all donations violates that right. However, Eyman provides no exacting scrutiny analysis or any other explanation of why the FCPA's disclosure requirements are not substantially related to the State's well-recognized interest in informing the electorate. And he does not argue that disclosing the names of donors would subject them to threats or harassment. Therefore, we reject this argument.

3. Oppressive Reporting

¶157 Eyman argues that forcing him to comply with the FCPA's reporting requirements for political committees is oppressive and unconstitutional as applied to him. We disagree.

¶158 Eyman relies on *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) (*MCFL*), to support this proposition. In that case, MCFL was incorporated as a nonprofit that did not accept contributions from business corporations or unions, as its resources came from members and fundraising activities. *Id.* at 241-42. MCFL routinely sent out newsletters, and in 1978 it sent out a "Special Edition" before the primary elections providing information

about voting prolife and stating that "[n]o pro-life candidate can win in November without your vote." *Id.* at 243.

¶159 The Court ruled that the Special Edition was an expenditure of funds that fell within § 441b of the Federal Election Campaign Act's definition of "expenditure." *Id.* at 246. The Court then turned to the constitutionality of the provision as applied. *Id.* at 251.

¶160 Because MCFL was incorporated, it was required to establish a "separate segregated fund" if it wished to do any independent spending whatsoever. *Id.* at 253. And because having such a fund qualified an entity as a political committee under the act, all of MCFL's independent expenditures would be regulated as it was furthering candidates. *Id.* This meant that it had to comply with a plethora of requirements than it would have if it were not incorporated. *Id.* at 254-55.

¶161 Applying strict scrutiny, the Court concluded that "while § 441b does not remove all opportunities for independent spending by organizations such as MCFL, the avenue it leaves open is more burdensome than the one it forecloses. The fact that the statute's practical effect may be to discourage protected speech is sufficient to characterize § 441b as an infringement on First Amendment activities." *Id.* at 255. And if MCFL spent as little as $250, it would trigger the disclosure provisions of § 434, which would provide enough information necessary to monitor MCFL's spending and contributions without subjecting it to the numerous regulations that accompany a political committee. *Id.* at 262. The Court concluded that there was no need for the purpose of disclosure to treat MCFL any differently than others who spent independently on behalf of candidates. *Id.*

¶162 *MCFL* is distinguishable. Here, the facts are different and the government has much more of an interest in ensuring transparency in campaign finance. Although there was no compelling justification in *MCFL*, the FCPA's reporting and disclosure requirements survive exacting scrutiny. *GMA* I, 195 Wn.2d at 461. The FCPA does not treat Eyman any differently than another entity subject to reporting requirements in his position as in *MCFL*. The justification for requiring complete disclosure and transparency applies equally across all entities. Finally, the FCPA reporting requirements are not as onerous as in *MCFL*.

¶163 We hold that the FCPA is not unconstitutional as applied to Eyman.

I. Validity of Injunction

¶164 Eyman argues that the injunction is not authorized by the FCPA, violates the First Amendment, and is vague and overbroad. We agree that the FCPA does not authorize two injunction provisions, but either decline to address or reject Eyman's constitutional arguments.

1. FCPA Authorization

¶165 RCW 42.17A.750(1)(i) states, "The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein." Eyman claims that there is no statutory basis for many of the injunction prohibitions, but he presents argument regarding only two: (1) prohibiting him from misleading potential donors as to why they should donate to a political committee or how any donations will be spent, and (2) prohibiting him from receiving payments from vendors who provide services to political committees with which he is associated.[7] We agree that the FCPA does not authorize those injunction provisions.

¶166 Misleading potential donors obviously is improper and may be illegal. But the State does not point to any provision of the FCPA that prohibits a person from misleading potential donors. Similarly, the State points to no provision of the FCPA that prohibits a person from receiving payments from vendors. The FCPA certainly prohibits concealing such payments and may require the payments to be reported, but the injunction is not limited to concealing or failing to report vendor payments.

¶167 Because these two injunction provisions do not enjoin Eyman from doing acts prohibited in the FCPA, we remand for the trial court to strike these two provisions.

2. Constitutionality of Injunction

¶168 Eyman argues that the injunction infringes on his First Amendment rights and that the injunction is vague and overbroad. Two of the injunction provisions that Eyman references are the two provisions we hold are not authorized by the FCPA. Therefore, we need not address the constitutional arguments regarding those provisions.

¶169 Eyman also claims that the injunction prohibits him from seeking charitable assistance, which violates his First Amendment right to do so. He cites to *City of Lakewood v. Willis*, which stated that "[t]he First Amendment protects 'charitable appeals for funds.'" 186 Wn.2d 210, 217, 375 P.3d 1056 (2016) (quoting *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980)).

¶170 But the injunction does not prohibit Eyman from soliciting contributions for himself. It requires that if Eyman solicits personal donations for his political work, he must establish a political committee, report all contributions, and ensure that the donations are made to the committee and not directly to himself. Eyman does not explain how these requirements – which do not prevent him from seeking charitable assistance – violate the First Amendment under the circumstances of this case. We reject Eyman's argument.

¶171 And we decline to address the constitutionality of any of the other injunction provisions because Eyman makes no meaningful argument regarding them. *Billings*, 2 Wn. App. 2d at 21.

J. Excessive Fines Clause

¶172 Eyman argues that the $2.6 million penalty the trial court imposed on him should be reversed because it violates the excessive fines clause in the United States and Washington Constitutions. We conclude that we cannot determine on this record whether the penalty violated the excessive fines clause.

1. Legal Principles

¶173 "Both the Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution prohibit excessive fines." *GMA* II, 198 Wn.2d at 897-98. The excessive fines clause limits the State's power to extract cash payments as punishment for an offense. *City of Seattle v. Long*, 198 Wn.2d 136, 159, 493 P.3d 94 (2021). "[A] fine is excessive 'if it is grossly disproportional to the gravity of the defendant's offense.'" *GMA* II, 198 Wn.2d at 899 (quoting *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998)).

¶174 We consider four factors to determine whether a fine is grossly disproportional: "'(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.'" *GMA* II, 198 Wn.2d at 899 (internal quotation marks omitted) (quoting *GMA* I, 195 Wn.2d at 476). However, we also must consider a person's ability to pay the fine. *GMA* II, 198 Wn.2d at 899; *see also Long*, 198 Wn.2d at 168-73. We review de novo whether a fine is excessive. *GMA* II, 198 Wn.2d at 899.

¶175 The court in *GMA* II addressed a $6 million base penalty that was trebled to $18 million for a political committee's violation of reporting requirements under the FCPA. *Id.* at 896. After analyzing the four factors, the court concluded that the penalty was not grossly disproportional to the offense. *Id.* at 899-907. In *Long*, the court held that a fee of $547.12 to retrieve an impounded vehicle in which the defendant lived was excessive when the evidence conclusively showed that the defendant was experiencing homelessness, had minimal income, and could not afford to pay the fee. 198 Wn.2d at 174-76.

2. Analysis

¶176 Initially, Eyman argues that the $2.8 million in attorney fees and costs must be considered part of the penalty imposed on him. We disagree. The penalties authorized under the FCPA are itemized in RCW 42.17A.750. Attorney fees are not listed as a penalty. Instead, RCW 42.17A.780 contains a separate provision authorizing the award of attorney fees.

¶177 Application of the four-factor test shows that the penalty imposed on Eyman was not constitutionally excessive. First, Eyman committed multiple FCPA violations over several years, failing to provide hundreds of reports during that time. The trial court stated, "[I]t would be difficult for the Court to conceive of a case with misconduct that is more egregious or more extensive than the misconduct committed by Defendant Eyman in this matter." CP at 4967.

¶178 Second, Eyman engaged in three separate activities that resulted in FCPA violations: receiving $308,185 from Citizen Solutions, loaning $200,000 to Citizens in Charge, and receiving over $800,000 in personal donations that he failed to report. The trial court concluded that "Eyman's violations of the FCPA are numerous and particularly egregious." CP at 4965.

¶179 Third, the trial court found that the maximum amount of penalties that could be imposed under the FCPA was over $5.75 million. The court imposed less than half of that amount. In addition, the court declined to treble the penalty as authorized under RCW 42.17A.780.

¶180 Fourth, the harm is difficult to quantify. But the court in *GMA* II stated that the failure to disclose contributors in that case caused "substantial harm" that "struck at the heart of the principles embodied in the FCPA." 198 Wn.2d at 904. "Voters are entitled to know who is contributing to political committees and paying for political campaigns by name." *Id.*

¶181 Eyman's primary argument is that regardless of the four-factor analysis, the penalty imposed on him is excessive because he does not have the ability to pay it. The Supreme Court in *Long* stated, "The central tenet of the excessive fines clause is to protect individuals against fines so oppressive as to deprive them of their livelihood." 198 Wn.2d at 171.

¶182 Here, the trial court did not address Eyman's ability to pay the $2.6 million penalty. Eyman attempted to testify about his personal finances, but the trial court sustained the State's objection to this line of questioning. We can take judicial notice that Eyman filed for bankruptcy during this proceeding, [8] but a bankruptcy filing does not necessarily mean that Eyman has no ability to pay the penalty.

¶183 In the absence of any evidence regarding Eyman's ability to pay the $2.6 million penalty, we cannot conduct our de novo review under the excessive fines clause. We have no choice but to remand this case to the trial court to take evidence regarding Eyman's ability to pay and to adjust the penalty if necessary to comply with the excessive fines clause.

K. Award of Attorney Fees to State

¶184 Eyman argues that we should reverse the trial court's award of attorney fees to the State because RCW 42.17A.780 does not allow the State to recover attorney fees. We disagree.

¶185 RCW 42.17A.780 states,

> In any action brought under this chapter, the court may award *to the commission* all reasonable costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. … If the defendant prevails, he or she shall be awarded all costs of trial and may be awarded reasonable attorneys' fees to be fixed by the court and paid by the state of Washington.

(Emphasis added.) This statute was enacted in 2018. Laws of 2018, ch. 304, § 17.

¶186 Before 2018, the FCPA attorney fee provision was contained in former RCW 42.17A.765(5) (2010). That provision stated that the court could award attorney fees "to *the State*" in any FCPA action. Former

RCW 42.17A.765(5) (emphasis added).

¶187 Eyman argues that RCW 42.17A.780 now allows only the PDC to recover attorney fees, not the State as formerly was allowed under former RCW 42.17A.765(5). He claims that the legislature's use of different language shows an intent to limit the award of attorney fees to the State. The State argues that only the AGO is authorized to litigate on behalf of the PDC. Former RCW 42.17A.765(1)(a). Therefore, an attorney fee award to the PDC under RCW 42.17A.780 must also include an award to the State.

¶188 We interpret RCW 42.17A.780 as allowing an attorney fee award to the State in an FCPA action when the State is suing on behalf of the PDC. In *GMA* I, the Supreme Court granted the State's request for an attorney fee award under former RCW 42.17A.765(5). 195 Wn.2d at 477. The court then stated, "*See also* RCW 42.17A.780." This citation suggests that the State also would have been entitled to attorney fees under RCW 42.17A.780. In addition, we are required to liberally construe the provisions of the FCPA. RCW 42.17A.001.

¶189 Therefore, we hold that the trial court did not err in awarding attorney fees to the State.

L. Attorney Fees on Appeal

¶190 Both Eyman and the State request that we award attorney fees to them on appeal under RCW 42.17A.780. Because the State is the predominantly prevailing party, we award attorney fees to the State.

CONCLUSION

¶191 We affirm in part and reverse in part the trial court's final judgment, and remand for the trial court to (1) vacate the conclusion that Eyman violated the FCPA by failing to report the $103,000 payment he received from Citizens in Charge, (2) strike the injunction provisions prohibiting Eyman from misleading potential donors and receiving payments from vendors, and (3) consider Eyman's ability to pay the penalty imposed and to adjust the penalty if necessary to comply with the excessive fines clause.

Cruser, A.C.J., and Lee, J., concur.

After modification, further reconsideration denied February 28, 2023.

References

Washington Rules of Court Annotated (LexisNexis ed.)

Annotated Revised Code of Washington by LexisNexis

United States Code Service (USCS) by LexisNexis

Footnotes

1 Some of these solicitations encouraged supporters to make tax deductible donations in his

name to Citizens in Charge, which had agreed to forward them to Eyman.

2 Multiple provisions of chapter 42.17A RCW have been amended since the events of this case transpired. Some of these amendments did not impact the statutory language on which we rely, and we refer to the current statutes. When the amendments are more significant, we refer to the former statutes.

3 The liberal construction provision is an unnumbered paragraph following subsection (11).

4 Reversing on this issue does not require us to remand for the trial court to reconsider the penalty imposed because the maximum penalty was $5,754.987.43, and the penalty actually imposed was only $2,601,502.81. There is no indication that removing $103,000 from the maximum penalty would impact the trial court's penalty determination.

5 Eyman also argues that this issue was not properly before the court because the State did not assert this violation in its amended complaint. But the trial court ruled that the State's amended complaint was broad enough to include this issue. Eyman did not assign error to that ruling.

6 However, we agree that the finding that he received "concealed payments" is a legal conclusion because the payments were not concealed if he had no duty to report.

7 We decline to consider whether the FCPA authorizes any of the other injunction provisions because Eyman presents no meaningful argument regarding them. *Billings*, 2 Wn. App. 2d at 21.

8 Case No. 18-14536-MLB (W.D. Wash.).

Filed
Washington State
Court of Appeals
Division Two

February 28, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TIM EYMAN, individually, as committee officer for Voters Want More Choices - Save the 2/3s and Protect Your Right to Vote on Initiatives, and as principal of TIM EYMAN WATCHDOG FOR TAXPAYERS, LLC; TIM EYMAN WATCHDOG FOR TAXPAYERS, LLC, a Washington limited liability company,

Appellants,

WILLIAM AGAZARM, individually and as a principal of CITIZEN SOLUTION LLC, a Washington limited liability company; and CITIZENS SOLUTIONS LLC, a Washington limited liability company,

Defendants.

No. 56653-2-II

ORDER DENYING MOTION FOR RECONSIDERATION AND AMENDING OPINION

Appellant Tim Eyman moves for reconsideration of the court's December 6, 2022 published opinion. Upon consideration, the court denies the motion. In addition, the court awards attorney fees to the State under RCW 42.17A.780.

The court further orders that the following sentence be deleted from page 20 of the court's opinion: "At no time after February 10 did Eyman object to or attempt to challenge the findings of fact or argue that he did not receive five days' notice."

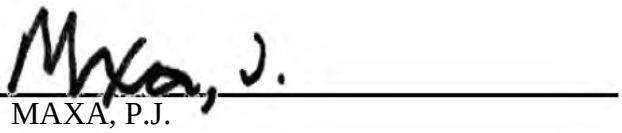
Accordingly, it is

APPENDIX B

SO ORDERED.

PANEL: Jj. Maxa, Lee, Cruser

FOR THE COURT:



MAXA, P.J.

We concur:

LEE, J.

CRUSER, A.C.J.

REVISED CODE OF WASHINGTON
CHAPTER 42.17A
CAMPAIGN DISCLOSURE AND CONTRIBUTION

Sections

RCW 42.17A.001

Declaration of policy.

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

APPENDIX C

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to ensure that the information disclosed will not be misused for arbitrary and capricious purposes and to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed.

RCW 42.17A.005

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW **29A.04.086**, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Books of account" means:

(a) In the case of a campaign or political committee, a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day; or

(b) In the case of a commercial advertiser, details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(8) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when the individual first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote the individual's candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote the individual's candidacy; or

(d) Gives consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(9) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(10) "Commercial advertiser" means any person that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboards, direct mail advertising, printing,

paid internet or digital communications, or any other means of mass communications used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(11) "Commission" means the agency established under RCW **42.17A.100**.

(12) "Committee" unless the context indicates otherwise, includes a political committee such as a candidate, ballot proposition, recall, political, or continuing political committee.

(13) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW **42.17A.710**, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(14) "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.

(15)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political or incidental committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, digital, or other form of political advertising or electioneering communication prepared by a candidate, a political or incidental committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Accrued interest on money deposited in a political or incidental committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political or incidental committee that is returned to the contributor within ten business days of the date on which it is received by the candidate or political or incidental committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of interest to the public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political or incidental committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political or incidental committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts toward any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political or incidental committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political or incidental committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political or incidental committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW **42.17A.205**; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (15)(b)(ix) is not considered an agent of the candidate or committee as long as the person has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(16) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(17) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(18) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(19) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(20) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(21)(a) "Electioneering communication" means any broadcast, cable, or satellite television, radio transmission, digital communication, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted electronically or by other means, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value or cost of one thousand dollars or more.

(b) "Electioneering communication" does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding the candidate becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of interest to the public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political or incidental committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) An internal political communication primarily limited to the members of or contributors to a political party organization or political or incidental committee, or to the

officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(22) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political or incidental committee of the principal of a loan, the receipt of which loan has been properly reported.

(23) "Final report" means the report described as a final report in RCW **42.17A.235**(11)(a).

(24) "Foreign national" means:

(a) An individual who is not a citizen of the United States and is not lawfully admitted for permanent residence;

(b) A government, or subdivision, of a foreign country;

(c) A foreign political party; and

(d) Any entity, such as a partnership, association, corporation, organization, or other combination of persons, that is organized under the laws of or has its principal place of business in a foreign country.

(25) "General election" for the purposes of RCW **42.17A.405** means the election that results in the election of a person to a state or local office. It does not include a primary.

(26) "Gift" has the definition in RCW **42.52.010**.

(27) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

(28) "Incidental committee" means any nonprofit organization not otherwise defined as a political committee but that may incidentally make a contribution or an expenditure in excess of the reporting thresholds in RCW **42.17A.235**, directly or through a political committee. Any nonprofit organization is not an incidental committee if it is only remitting payments through the nonprofit organization in an aggregated form and the nonprofit organization is not required to report those payments in accordance with this chapter.

(29) "Incumbent" means a person who is in present possession of an elected office.

(30)(a) "Independent expenditure" means an expenditure that has each of the following elements:

(i) It is made in support of or in opposition to a candidate for office by a person who is not:

(A) A candidate for that office;

(B) An authorized committee of that candidate for that office; and

(C) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(ii) It is made in support of or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(iii) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(iv) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of one thousand dollars or more. A series of expenditures, each of which is under one thousand dollars, constitutes one independent expenditure if their cumulative value is one thousand dollars or more.

(b) "Independent expenditure" does not include: Ordinary home hospitality; communications with journalists or editorial staff designed to elicit a news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, controlled by a person whose business is that news medium, and not controlled by a candidate or a political committee; participation in the creation of a publicly funded voters' pamphlet statement in written or video form; an internal political communication primarily limited to contributors to a political party organization or political action committee, the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid for by the worker.

(31)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(32) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(33) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(34) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter **34.05** RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(35) "Lobbyist" includes any person who lobbies either on the person's own or another's behalf.

(36) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom the lobbyist is compensated for acting as a lobbyist.

(37) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(38) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(39) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(40) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, digital communication, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(41) "Political committee" means any person (except a candidate or an individual dealing with the candidate's or individual's own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(42) "Primary" for the purposes of RCW **42.17A.405** means the procedure for nominating a candidate to state or local office under chapter **29A.52** RCW or any other primary for an election that uses, in large measure, the procedures established in chapter **29A.52** RCW.

(43) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(44) "Public record" has the definition in RCW **42.56.010**.

(45) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW **29A.56.120** and ending thirty days after the recall election.

(46) "Remediable violation" means any violation of this chapter that:

(a) Involved expenditures or contributions totaling no more than the contribution limits set out under RCW **42.17A.405**(2) per election, or one thousand dollars if there is no statutory limit;

(b) Occurred:

(i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or

(ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;

(c) Does not materially harm the public interest, beyond the harm to the policy of this chapter inherent in any violation; and

(d) Involved:

(i) A person who:

(A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and

(B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or

(ii) A candidate who:

(A) Lost the election in question; and

(B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.

(47)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political or incidental committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(48) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(49) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(50) "State official" means a person who holds a state office.

(51) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts or expenses incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts or expenses when it makes its final report under RCW **42.17A.255**.

(52) "Technical correction" means the correction of a minor or ministerial error in a required report that does not materially harm the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter.

(53) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political or incidental committee, pursuant to RCW **42.17A.210**, to perform the duties specified in that section.

(54) "Violation" means a violation of this chapter that is not a remediable violation, minor violation, or an error classified by the commission as appropriate to address by a technical correction.

RCW 42.17A.205

Statement of organization by political committees.

(1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name, address, and electronic contact information of the committee;

(b) The names, addresses, and electronic contact information of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name, address, and electronic contact information of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW **42.17A.430**, in the event of dissolution;

(i) Such other information as the commission may by rule prescribe, in keeping with the policies and purposes of this chapter;

(j) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(k) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) No two political committees may have the same name.

(4) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change.

(5) As used in this section, the "name" of a sponsored committee must include the name of the person who is the sponsor of the committee. If more than one person meets the definition of sponsor, the name of the committee must include the name of at least one sponsor, but may include the names of other sponsors. A person may sponsor only one political committee for the same elected office or same ballot proposition per election cycle.

RCW 42.17A.210

Treasurer.

(1) Each candidate, within two weeks after becoming a candidate, and each political committee, at the time it is required to file a statement of organization, shall designate and file with the commission the name and address of one legally competent individual, who may be the candidate, to serve as a treasurer.

(2) A candidate, a political committee, or a treasurer may appoint as many deputy treasurers as is considered necessary and shall file the names and addresses of the deputy treasurers with the commission.

(3)(a) A candidate or political committee may at any time remove a treasurer or deputy treasurer.

(b) In the event of the death, resignation, removal, or change of a treasurer or deputy treasurer, the candidate or political committee shall designate and file with the commission the name and address of any successor.

(4) No treasurer or deputy treasurer may be deemed to be in compliance with the provisions of this chapter until the treasurer's or deputy treasurer's name, address, and electronic contact information is filed with the commission.

RCW 42.17A.225

Filing and reporting by continuing political committee.

(1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17A.240;

(b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;

(c) Other information the commission shall prescribe by rule.

(3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candidate or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.

(4)(a) A continuing political committee shall file reports as required by this chapter until the committee has ceased to function and intends to dissolve, at which time, when there is no outstanding debt or obligation and the committee is concluded in all respects, a final report shall be filed. Upon submitting a final report, the continuing political committee so intending to dissolve must file notice of intent to dissolve with the commission and the commission must post the notice on its website.

(b) The continuing political committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The continuing political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action, pursuant to this chapter, is pending against the continuing political committee; and

(iii) All penalties assessed by the commission or court order have been paid by the continuing political committee.

(c) The continuing political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease, and there shall be no further obligations under this chapter. Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.

(5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the ten calendar days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW **42.17A.235**(6).

(6) All reports filed pursuant to this section shall be certified as correct by the treasurer.

(7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

RCW 42.17A.235

Reporting of contributions and expenditures—Public inspection of accounts.

(1)(a) In addition to the information required under RCW **42.17A.205** and **42.17A.210**, each candidate or political committee must file with the commission a report of all contributions received and expenditures made as a political committee on the next reporting date pursuant to the timeline established in this section.

(b) In addition to the information required under RCW **42.17A.207** and **42.17A.210**, on the day an incidental committee files a statement of organization with the commission, each incidental committee must file with the commission a report of any election campaign expenditures under *RCW **42.17A.240**(6), as well as the source of the ten largest cumulative payments of ten thousand dollars or greater it received in the current calendar year from a single person, including any persons tied as the tenth largest source of payments it received, if any.

(2) Each treasurer of a candidate or political committee, or an incidental committee, required to file a statement of organization under this chapter, shall file with the commission a report, for each election in which a candidate, political committee, or incidental committee is participating, containing the information required by RCW **42.17A.240** at the following intervals:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first full month after the election.

(3)(a) Each treasurer of a candidate or political committee shall file with the commission a report on the tenth day of each month during which the candidate or political committee is not participating in an election campaign, only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

(b) Each incidental committee shall file with the commission a report on the tenth day of each month during which the incidental committee is not otherwise required to report under this section only if the committee has:

(i) Received a payment that would change the information required under RCW **42.17A.240**(2)(d) as included in its last report; or

(ii) Made any election campaign expenditure reportable under *RCW **42.17A.240**(6) since its last report, and the total election campaign expenditures made since the last report exceed two hundred dollars.

(4) The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(5) For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer for a candidate or a political committee shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for the treasurer's records. In the event of deposits made by candidates, political committee members, or paid staff other than the treasurer, the copy shall be immediately provided to the treasurer for the treasurer's records. Each report shall be certified as correct by the treasurer.

(6)(a) The treasurer for a candidate or a political committee shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the ten calendar days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the political committee's statement of organization filed under RCW **42.17A.205**, the books of account must be open for public inspection by appointment at a place agreed upon by both the treasurer and the requestor, for inspections between 9:00 a.m. and 5:00 p.m. on any day from the tenth calendar day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter

for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within forty-eight hours of the time and day that is requested for the inspection. The treasurer may provide digital access or copies of the books of account in lieu of scheduling an appointment at a designated place for inspection. If the treasurer and requestor are unable to agree on a location and the treasurer has not provided digital access to the books of account, the default location for an appointment shall be a place of public accommodation selected by the treasurer within a reasonable distance from the treasurer's office.

(b) At the time of making the appointment, a person wishing to inspect the books of account must provide the treasurer the name and telephone number of the person wishing to inspect the books of account. The person inspecting the books of account must show photo identification before the inspection begins.

(c) A treasurer may refuse to show the books of account to any person who does not make an appointment or provide the required identification. The commission may issue limited rules to modify the requirements set forth in this section in consideration of other technology and best practices.

(7) Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection (6) of this section.

(8) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred or for any longer period as otherwise required by law.

(9) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(10) Where there is not a pending complaint concerning a report, it is not evidence of a violation of this section to submit an amended report within twenty-one days of filing an initial report if:

(a) The report is accurately amended;

(b) The amended report is filed more than thirty days before an election;

(c) The total aggregate dollar amount of the adjustment for the amended report is within three times the contribution limit per election or two hundred dollars, whichever is greater; and

(d) The committee reported all information that was available to it at the time of filing, or made a good faith effort to do so, or if a refund of a contribution or expenditure is being reported.

(11)(a) When there is no outstanding debt or obligation, the campaign fund is closed, the campaign is concluded in all respects, and the political committee has ceased to function and intends to dissolve, the treasurer shall file a final report. Upon submitting a final report, the political committee so intending to dissolve must file notice of intent to dissolve with the commission and the commission must post the notice on its website.

(b) Any political committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action under this chapter is pending against the political committee; and

(iii) All penalties assessed by the commission or court order have been paid by the political committee.

(c) The political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease, and there shall be no further obligations under this chapter. Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.

(12) The commission must adopt rules for the dissolution of incidental committees.

RCW 42.17A.240

Contents of report.

Each report required under RCW **42.17A.235** (1) through (4) must be certified as correct by the treasurer and the candidate and shall disclose the following, except an incidental committee only must disclose and certify as correct the information required under subsections (2)(d) and (7) of this section:

(1) The funds on hand at the beginning of the period;

(2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year, with the following exceptions:

(a) Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;

(b) Income that results from a fund-raising activity conducted in accordance with RCW **42.17A.230** may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW **42.17A.230**;

(c) Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor;

(d) Payments received by an incidental committee from any one person need not be reported unless the person is one of the committee's ten largest sources of payments received, including any persons tied as the tenth largest source of payments

received, during the current calendar year, and the value of the cumulative payments received from that person during the current calendar year is ten thousand dollars or greater. For payments to incidental committees from multiple persons received in aggregated form, any payment of more than ten thousand dollars from any single person must be reported, but the aggregated payment itself may not be reported. The commission may suspend or modify reporting requirements for payments received by an incidental committee in cases of manifestly unreasonable hardship under this chapter;

(e) Payments from private foundations organized under section 501(c)(3) of the internal revenue code to an incidental committee do not have to be reported if:

(i) The private foundation is contracting with the incidental committee for a specific purpose other than election campaign purposes;

(ii) Use of the funds for election campaign purposes is explicitly prohibited by contract; and

(iii) Funding from the private foundation represents less than twenty-five percent of the incidental committee's total budget;

(f) Commentary or analysis on a ballot proposition by an incidental committee is not considered a contribution if it does not advocate specifically to vote for or against the ballot proposition; and

(g) The money value of contributions of postage is the face value of the postage;

(3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(4) All other contributions not otherwise listed or exempted;

(5) A statement that the candidate or political committee has received a certification from any partnership, association, corporation, organization, or other combination of persons making a contribution to the candidate or political committee that:

(a) The contribution is not financed in any part by a foreign national; and

(b) Foreign nationals are not involved in making decisions regarding the contribution in any way;

(6) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;

(7) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures. An incidental committee only must report on expenditures, made and reportable as contributions as defined in RCW **42.17A.005**, to election campaigns. For purposes of this subsection, commentary or analysis on a ballot proposition by an incidental committee is not considered an expenditure if it does not advocate specifically to vote for or against the ballot proposition;

(8) The name, address, and electronic contact information of each person to whom an expenditure was made for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this

subsection in addition to what is required to be reported under subsection (7) of this section;

(9)(a) The name and address of any person and the amount owed for any debt with a value of more than seven hundred fifty dollars that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or within ten business days during any other period.

(b) For purposes of this subsection, debt does not include regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding;

(10) The surplus or deficit of contributions over expenditures;

(11) The disposition made in accordance with RCW **42.17A.430** of any surplus funds; and

(12) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter.

RCW 42.17A.435

Identification of contributions and communications.

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

[**1975 1st ex.s. c 294 § 8**; **1973 c 1 § 12** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.120**.]

RCW 42.17A.445

Personal use of contributions—When permitted.

Contributions received and reported in accordance with RCW **42.17A.220** through **42.17A.240** and **42.17A.425** may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record shall be maintained by the candidate or the candidate's authorized committee in accordance with RCW **42.17A.235**.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW **42.17A.240**.

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW **42.17A.240**. However, contributions may not be used to reimburse a candidate for loans totaling more than *four thousand seven hundred dollars made by the candidate to the candidate's own authorized committee.

RCW 42.17A.750

Civil remedies and sanctions—Referral for criminal prosecution.

(1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate, committee, or incidental committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, the lobbyist's or sponsor's registration may be revoked or suspended and the lobbyist or sponsor may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW **42.17A.405** may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) When assessing a civil penalty, the court may consider the nature of the violation and any relevant circumstances, including the following factors:

(i) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, resulted from a knowing or intentional effort to conceal, deceive or mislead, or from collusive behavior, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(ii) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period or otherwise had a significant or material impact on the public;

(iii) Experience with campaign finance law and procedures or the financing, staffing, or size of the respondent's campaign or organization;

(iv) The amount of financial activity by the respondent during the statement period or election cycle;

(v) Whether the late or unreported activity was within three times the contribution limit per election, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(vi) Whether the respondent or any person benefited politically or economically from the noncompliance;

(vii) Whether there was a personal emergency or illness of the respondent or member of the respondent's immediate family;

(viii) Whether other emergencies such as fire, flood, or utility failure prevented filing;

(ix) Whether there was commission staff or equipment error, including technical problems at the commission that prevented or delayed electronic filing;

(x) The respondent's demonstrated good-faith uncertainty concerning commission staff guidance or instructions;

(xi) Whether the respondent is a first-time filer;

(xii) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action and a demonstrated wish to acknowledge and take responsibility for the violation;

(xiii) Penalties imposed in factually similar cases; and

(xiv) Other factors relevant to the particular case.

(e) A person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

(f) Each state agency director who knowingly fails to file statements required by RCW **42.17A.635** shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

(g) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(h) Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW **42.17A.635** (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

(i) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter **9.92** RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter **9.92** RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter **9.94A** RCW.

RCW 42.17A.770

Limitation on actions.

Except as provided in RCW **42.17A.775**(4), any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred.

RCW 42.17A.780

Damages, costs, and attorneys' fees—Joint and several liability.

In any action brought under this chapter, the court may award to the commission all reasonable costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial and may be awarded reasonable attorneys' fees to be fixed by the court and paid by the state of Washington.

UNITED STATES CONSTITUTION
BILL OF RIGHTS
AMENDMENTS

- First Amendment [Religion, Speech, Press, Assembly, Petition (1791)] (see explanation)
- Fifth Amendment [Grand Jury, Double Jeopardy, Self-Incrimination, Due Process (1791)] (see explanation)
- Eighth Amendment [Excess Bail or Fines, Cruel and Unusual Punishment (1791)] (see explanation)

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

WASHINGTON STATE CONSTITUTION
ARTICLE I
DECLARATION OF RIGHTS

Sections

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

WAC 390-19-010 Submission of required materials electronically. (1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lob-byist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with this chapter.

(2) Full and prompt access to the information required by persons subject to the law is best realized through use of electronic report-ing. For this reason, the Washington state legislature and the commis-sion have mandated the use of electronic reporting, and the commission also requires that other materials, such as applications, statements, notices, payments, or other items required under the provisions of chapter 42.17A RCW be submitted to the PDC electronically, where the PDC has made an electronic method available.

(3) Persons subject to reporting requirements under this chapter must file reports using the electronic reporting method provided or approved by the PDC.

(4) Persons required to provide the PDC with electronic contact information must provide an email address or other electronic format, if such alternate format has been approved by the PDC.

(5) Any person required to provide information electronically, or required to provide electronic contact information, but who does not do so, is in violation of RCW 42.17A.055 and may be subject to en-forcement action unless the person has sought and been granted an ex-ception under WAC 390-19-050.

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below.

Dated this 28th day of March, 2023 at Tacoma, Washington.

s/*Anne Lott*
Anne Lott, Legal Assistant

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GOODSTEIN LAW GROUP PLLC

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Appellate Court Case Title:	State of Washington, Respondent v. Tim Eyman, et al, Appellants
Superior Court Case Number:	17-2-01546-3

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