NO. 99407-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GROCERY MANUFACTURERS ASSOCIATION,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

GMA's description of this case is backwards. On GMA's telling, it committed only a "garden-variety" violation of Washington campaign finance law, the State sought a wildly disproportionate penalty, and the Court of Appeals ignored precedent in upholding that penalty.

The reality is starkly different. GMA committed the largest violation of campaign finance law in Washington history, intentionally concealing the true source of over $11 million in campaign contributions. The State sought a penalty commensurate to GMA's misconduct, applying the same formula used for those on the other side of the same campaign. And the Court of Appeals carefully applied precedent in upholding that penalty.

There is no reason for this Court to review the Court of Appeals' careful opinion. GMA's exceptional misconduct amply justified the penalty imposed here, and nothing in the Constitution requires that GMA instead receive a slap on the wrist.

II. COUNTERSTATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals erred in its application of U.S. Supreme Court precedent to uphold the penalty imposed here where GMA committed the largest campaign finance violation in state history.

III. COUNTERSTATEMENT OF THE CASE

GMA is a trade association comprised of over 300 companies. CP 4052 (¶ 1). In June 2012, Washington Initiative 522 (I-522) was filed as an initiative to the legislature. CP 4054 (¶ 15). As early as January 2013, GMA began exploring ways to oppose I-522 while shielding member companies from public disclosure. *State v. Grocery Mfrs. Ass'n* (*GMA II*), 195 Wn.2d 442, 449-50, 461 P.3d 334 (2020) (quoting CP 4055 (¶ 25)). In February 2013, GMA established a "Defense of Brands Account" to oppose I-522 and identify only GMA as the funder, concealing the role of member companies. CP 4057 (¶¶ 32, 36), 4059 (¶¶ 44-45, 50), 4060 (¶ 51). Concealment from public scrutiny was a specific, primary purpose of the Account. CP 4057 (¶¶ 34-35), 4059 (¶¶ 47-48).

GMA funded its Defense of Brands Account through a special assessment of 40 of its 300 members. CP 4052 (¶ 1), 4060 (¶¶ 51-52). Of the 40 invoiced members, 9 did not pay into the Account. CP 4060 (¶ 52).

GMA began contributing to No on 522 in May 2013. CP 4063 (¶ 76). GMA provided its member companies guidance on how to mislead the public regarding funding for No on 522, suggesting this response:

> Q: Is your company providing funding to the "No on I-522" campaign in Washington State?
>
> A: No. Company X is a member of the Grocery Manufacturers Association and supports the work the

> association does on product safety, health and wellbeing, sustainability and a host of other issues. We support GMA, its position on genetically modified ingredients and the association's opposition to I-522 in Washington State. GMA's views and financial support for the "No on I-522" campaign reflect the views of most food and beverage manufacturers in the United States.

Ex. 74. This was done "at least in part to divert attention from the true source of the funds, namely, the individual GMA members." CP 4061 (¶ 65). GMA also removed its membership list from its website in June 2013. CP 4065 (¶ 84). GMA undertook these acts "for the improper purpose of concealment[.]" *GMA II*, 195 Wn.2d at 470.

Ultimately, GMA contributed a total of $11,000,000 from the Defense of Brands Account to the No on 522 committee. CP 4066 (¶ 89). All the while, GMA concealed from the public the true source of the funding: the specific GMA members who had paid the special assessment. *GMA II*, 195 Wn.2d at 464 ("[T]he voters were not informed that of GMA's over 300 member companies in 2013, fewer than 40 contributed to the [Defense of Brands] account.").

The State sued GMA on October 16, 2013. CP 18-24. The superior court granted the State's motion for summary judgment as to GMA's violation of Washington's campaign finance laws but reserved for trial whether GMA's violation was intentional and the appropriate penalty. CP 3340. After a five-day trial, the superior court entered a detailed order,

concluding that GMA acted intentionally. CP 4049-72. The superior court imposed a $6 million civil penalty, which it trebled. CP 4072. After entry of the judgment, GMA filed an untimely motion seeking to challenge the penalty under the Excessive Fines Clause. CP 4324-29. The superior court rejected the motion as untimely. CP 4359-60.

The Court of Appeals affirmed the $6 million penalty but reversed the trebling of that amount. *State v. Grocery Mfrs. Ass'n* (*GMA I*), 5 Wn. App. 2d 169, 177, 425 P.3d 927 (2018). This Court reinstated the trebled penalty and remanded to the Court of Appeals to address GMA's Excessive Fines Clause argument. *GMA II*, 195 Wn.2d at 477. On remand, the Court of Appeals carefully reviewed and rejected that argument. *State v. Grocery Mfrs. Ass'n* (*GMA III*), 15 Wn. App. 2d 290, 300-07, 475 P.3d 1062 (2020).

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

In deciding that the penalty imposed here was within constitutional bounds given GMA's unprecedented violation of state law, the Court of Appeals correctly applied the very case relied on by GMA—*United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). The Court of Appeals' correct application of precedent does not warrant review. Nor does GMA's false allegation of an improper purpose or its novel argument for expansion of United States Supreme Court precedent.

A. The Court of Appeals Correctly Applied Precedent

Addressing GMA's excessive fines clause argument, the Court of Appeals applied the precise precedent cited by GMA in its untimely motion in superior court and again in the Court of Appeals. *Compare* CP 4326-29 (arguing *Bajakajian* factors), *and* Opening Br. at 42-49 (same), *with GMA III*, 15 Wn. App. 2d at 300-07 (applying *Bajakajian* factors).

The Court of Appeals' decision correctly applies the two overarching principles and four factors derived from *Bajakajian*. The Court heeded two "particularly relevant" principles. First, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature" and thus, courts should give substantial deference to legislative authority. *Bajakajian*, 524 U.S. at 336. Second, "any judicial determination regarding the gravity of a particular . . . offense will be inherently imprecise." *Id.*; *see GMA III,* 15 Wn. App. 2d at 301. The Court of Appeals then applied four factors taken from *Bajakajian*: "(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*, 195 Wn.2d at 476 (quoting *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004)). Because the Court of Appeals correctly applied precedent, the Court should deny review.

1. The Court of Appeals showed appropriate deference to the legislature's decisions about appropriate penalties

Bajakajian's first admonition, which the Court of Appeals followed, is that courts should generally defer to legislative judgments about appropriate penalties. *See GMA III*, 15 Wn. App. 2d at 301, 305 (citing *Bajakajian*, 524 U.S. at 336). Here, the penalties imposed were well within the limits set by state law. These penalty determinations by the legislature, while not dispositive, deserve deference because they "represent the collective opinion" of Washingtonians "as to what is and what is not excessive." *United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999). Washingtonians have concluded that campaign finance penalties should be more than just a cost of doing business. Washington is not an outlier in this conclusion. Federal law allows a penalty up to ten times the amount of the contribution—significantly more than is allowed under Washington law. *See* 11 C.F.R. § 111.24(a)(2)(ii).

The Court of Appeals also noted a second principle: The inherent imprecision in "any judicial determination regarding the gravity of a particular" offense means that reviewing courts should only set aside a penalty if it "is grossly disproportional to the gravity of the defendant's offense[.]" *Bajakajian*, 524 U.S. at 322-23, 337; *see GMA III*, 15 Wn. App. 2d at 301. The Court correctly determined that GMA failed this burden.

2. GMA's violations were serious

Applying the first *Bajakajian* factor, the Court of Appeals correctly determined that the violations were "serious and significant." *GMA III*, 15 Wn. App. 2d at 302. GMA's attempts to minimize its actions as "a garden-variety FCPA violation," *see* Pet. at 5, ignore that it perpetrated the largest violation of Washington campaign finance laws in state history.

The Court of Appeals rejected GMA's attempts to minimize its actions as a mere reporting violation and considered unchallenged findings from the trial court on factors that weighed in favor of a substantial penalty. *GMA III*, 15 Wn. App. 2d at 302 (citing CP 4069). The Court of Appeals specifically called out GMA's efforts to "intentionally shield its members' political activity from public scrutiny in a campaign involving a contentious ballot proposition," which blocked Washington voters from knowing who was spending millions to defeat the proposition. *GMA III*, 15 Wn. App. 2d at 303. As this Court has already recognized, GMA's actions go beyond a "garden-variety" reporting violation, as GMA "engage[d] in acts of concealment that went beyond its failure to comply with the FCPA's registration and disclosure requirements." *GMA II*, 195 Wn.2d at 469.

GMA's strained attempts to analogize this case to *Bajakajian* rely on its continued attempts to minimize the severity of its actions. In *Bajakajian*, the defendant failed to report $350,000 in cash during an

international flight. *Bajakajian*, 524 U.S. at 324-25. Bajakajian pleaded guilty to a statute that requires anyone who transports more than $10,000 out of the country to report the transfer. *Id.* at 325. The federal government then sought forfeiture of the cash. *Id.* at 325-26. The Court thought it significant that the crime was merely failing to report currency that was lawfully Bajakajian's that he intended for a lawful purpose. *Id.* at 338. The Court further noted that Bajakajian did not fit into the class of persons for whom the forfeiture statute was principally designed—money launderers, drug traffickers, and tax evaders. *Id.* The Court accordingly found that Bajakajian's culpability was minimal because the crime was "solely a reporting offense." *Id.* at 337-38.

But here, reporting and disclosure are the very purposes of the FCPA, and the statute's first stated policy is "[t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided." RCW 42.17A.001(1). As a political spender, GMA is *precisely* within the class of parties to be regulated under the statute. And this case involves an active effort to conceal, not just a failure to report. *GMA II*, 195 Wn.2d at 469-70. GMA's misdeeds constitute more than just a reporting violation; they were a fraud upon the public as to the identity of those who stood to benefit from I-522's defeat.

GMA critiques the Court of Appeals for focusing on GMA's intent,

Opening Br. at 6, but courts often look to a violator's culpability in an excessive fines analysis. *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 923 (9th Cir. 2020) (explaining that if culpability is high, the nature and extent of the underlying violation is more significant); *$100,348.00 in U.S. Currency*, 354 F.3d at 1123 (determining that culpability increased where the defendant's violation involved reckless behavior).

GMA also contends that the Court of Appeals should have looked at whether its conduct was "uniquely blameworthy and repugnant in comparison to the conduct of other[s]" who violated the FCPA. Pet. at 6. GMA goes on to compare the penalty imposed to penalties in other FCPA cases. Pet. at 7-8. But GMA cites no authority for this argument, and courts are instructed to "review the specific actions of the violator rather than by taking an abstract view of the violation." *Pimentel*, 974 F.3d at 923. In any event, GMA's conduct was uniquely repugnant in that it intentionally perpetrated by far the largest campaign finance violation in Washington history. And offhand comparisons to prior cases lack force given that the actions alleged in those cases varied widely, many settled, and none remotely compare to the scope of the violation here.[1]

Here, the Court of Appeals properly looked at GMA's specific

[1] *See* Wash. State Office of the Att'y Gen., *Enforcement Of Campaign Finance Laws: AGO Case Outcomes*, https://www.atg.wa.gov/enforcement-campaign-finance-laws (last visited Feb. 25, 2021).

actions, including that GMA solicited over $14 million in contributions from its member companies and intentionally concealed those sources from the public, as well as the number of violations and the length of deception, to correctly conclude that the extent and nature of the violations were serious and substantive. *GMA III*, 15 Wn. App. 2d at 302-03.

3. GMA's violations were related to other illegal activities

The Court of Appeals next addressed the second *Bajakajian* factor: whether the underlying offense relates to other illegal activities. *See GMA III*, 15 Wn. App. 2d at 303. This factor is not as relevant regarding civil penalties "as it might be in criminal contexts." *Pimentel*, 974 F.3d at 923.

The Court of Appeals explicitly rejected GMA's argument that its conduct involved no other illegal activities. *See* Pet. at 8. As the Court of Appeals discussed, the trial court found that GMA committed multiple FCPA violations. This Court likewise held that GMA violated the FCPA not only by failing to register as a political committee in violation of former RCW 42.17A.205(1) (2012) and former RCW 42.17A.235 (2012), but also by intentionally concealing the true source of donations in violation of RCW 42.17A.435. *See GMA II*, 195 Wn.2d at 461, 469-70. This Court emphasized that GMA undertook specific actions for the improper purpose of concealment, so its failure to report was bound up in its illegal effort to conceal the true source of the funds. *GMA II*, 195 Wn.2d at 470. By contrast,

Bajakajian dealt only with the forfeiture as a result of a single reporting violation where there was no other offense concealed. *Bajakajian*, 524 U.S. at 325-26.

In short, the Court of Appeals was correct to conclude that GMA's conduct involved multiple illegal activities.

4. The other penalties available here further support the proportionality of the fine imposed

The Court of Appeals properly applied the third factor, "the penalties the legislature authorized and the maximum penalties that could have been imposed." *GMA III*, 15 Wn. App. 2d at 303-04 (citing *$100,348.00 in U.S. Currency*, 354 F.3d at 1122). The court correctly concluded that this factor supported the penalty here.

The lower court noted that former RCW 42.17A.750(1)(f) (2012) authorized the trial court to impose a civil penalty equal to the amount of the unreported contributions. The trial court found that GMA contributed $11 million to the No on I-522 campaign, and collected over $14 million in the DOB account, authorizing a base penalty of up to those amounts, which could then be trebled. Thus, "[t]he $18 million penalty the trial court imposed was well within the maximum penalty that the trial court could have imposed under FCPA provisions." *See GMA III*, 15 Wn. App. 2d at 304.

GMA argues that the $10,000 per report violation and the $10 per

day penalties under former RCW 42.17A.750(1)(c) and (d), which would total $622,820 and treble to $1.87 million, are the only proper points of comparison for GMA's violations. Opening Br. at 10. It further argues that the amount undisclosed cannot be determinative, otherwise no disclosure penalty could be excessive. Opening Br. at 9-10. These arguments are wrong, as case law expressly permits courts to consider maximum penalties.

It is wholly proper for courts to "consider the maximum penalty prescribed" in their excessive fines analysis, as the Court of Appeals did below. *See, e.g.*, *United States v. Mackby*, 339 F.3d 1013, 1018 (9th Cir. 2003); *United States v. Hantzis*, 403 F. App'x 170, 172 (9th Cir. 2010) ($4,000,000 fine not excessive where the "district court was statutorily entitled to impose a fine twice th[at] amount"); *United States ex rel. Shutt v. Cmty. Home & Health Care Servs., Inc.*, 305 F. App'x 358, 361 (9th Cir. 2008) (finding judgment not constitutionally excessive in part because it was "well below the statutory maximum"); *Balice v. U.S. Dep't of Agric.*, 203 F.3d 684, 699 (9th Cir. 2000) (holding that a $225,500 penalty for illegal almond sales was not excessive in part because the maximum authorized penalty was nearly twice that amount).

Under GMA's logic, if an entity secretly donated $20 million to a campaign 30 days before the election and reported the contribution the day after the election, the maximum penalty could only be based on that short

time period, regardless of the amount concealed. But this application makes no sense. The legislature chose to use the amount concealed as one basis for the penalty because it is a highly relevant measure of the harm caused. Courts should hesitate to override this type of legislative judgment. *See Bajakajian*, 524 U.S. at 336 (stating that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature").

5. The harm GMA caused to the public was substantial

Regarding the fourth factor—the extent of the harm caused—the Court of Appeals concluded that the harm was "substantial" because GMA undermined the transparency of the ballot measure campaign and "intentionally denied the voters information related to substantial campaign contributions from otherwise unidentified parties over an extended period of the election season." *GMA III*, 15 Wn. App. 2d at 304-05. This is consistent with what this Court stated in its prior opinion: "The identity of the specific companies that contributed is precisely the type of information that campaign finance disclosure laws are designed to ferret out, and the State has an important interest in giving voters access to that information." *GMA II*, 195 Wn.2d at 464 (internal quotation marks omitted).

GMA argues that its violation caused no harm and that no voter was deceived about the motives of I-522's opponents. Opening Br. at 10-11. But GMA's own actions refute this claim. GMA intended to shield its members

from public scrutiny and skirt state campaign finance disclosure rules. *GMA II*, 195 Wn. 2d at 449. It advised its members on "how to divert attention from the true source of campaign funding[.]" *Id.* at 470. GMA removed its membership list from its website and encouraged members to deny that they were funding No on 522. *GMA III*, 15 Wn. App. 2d at 295.

GMA contends that voters were not harmed because "all of the information that the State says should have been disclosed was, in fact, disclosed" just before the election. Pet. at. 11. But a violator should not face a lesser penalty because he or she gets caught. GMA ignores that its actions "undermined the transparency of the ballot proposition measure and intentionally denied the voters information related to substantial campaign contributions from otherwise unidentified parties over an extended period of the election season." *GMA III*, 15 Wn. App. 2d at 304-05.

GMA also ignores that courts may "consider how the violation erodes the government's purposes for proscribing the conduct." *Pimentel*, 974 F.3d at 923. For example, in *Pimentel*, the Ninth Circuit concluded that fines related to overstayed parking meters were not excessive based on the harms of increased congestion and impeded traffic flow. *Id.* at 924. The Ninth Circuit has also rejected a defendant's claim that no harm resulted because trafficked food stamps were never redeemed. *Vasudeva v. United States*, 214 F.3d 1155, 1161 (9th Cir. 2000). The court held that trafficking

stamps was harmful, regardless of redemption, because the trafficking "undermine[d] the viability of an important government program[.]" *Id.*; *see also Mackby*, 339 F.3d at 1019 (noting that widespread fraud in the administration of Medicare would undermine public confidence in the system); *Balice*, 203 F.3d at 699 (the violation "undermined the Secretary's efforts to protect the stability of the almond market").

The harm caused by GMA's acts, in undermining transparency and denying voters from knowing the identity of contributors to the No on I-522 campaign, is an important subject of the State's concern. GMA prevented Washington voters from learning who was really spending money to defeat I-522. GMA continues to deny the importance that the people of Washington place on a transparent electoral system—an importance that courts have repeatedly recognized—and the harm that GMA caused to the public through its concealment. *See, e.g., GMA II*, 195 Wn.2d at 455 (explaining that disclosure allows the public to "follow the money with respect to campaigns and lobbying" (internal quotation marks removed)). These harms are markedly different from *Bajakajian*, where the "minimal" harm only deprived the government of information that money had left the country. *Bajakajian*, 524 U.S. at 339.

In sum, the Court of Appeals properly applied precedent in holding GMA's civil penalty is proportional to the gravity of GMA's offenses. This

Court should reject GMA's contrary argument and deny the petition.

B. The Court of Appeals Correctly Concluded that GMA Has Not Established Selective Enforcement

In *GMA II*, this Court correctly observed that "[p]unitive fines should not be sought or imposed 'to retaliate against or chill the speech of political enemies' or as ' "a source of revenue," ' " and left this issue to be addressed on remand. *GMA II*, 195 Wn.2d at 476 (quoting *Timbs v. Indiana*, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019)). The burden to establish an Excessive Fines Clause violation is on the party asserting it. *E.g.*, *United States v. $132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014). GMA never raised a claim of impermissible purpose at trial, and in any event failed to carry its burden of establishing an impermissible purpose, as the Court of Appeals concluded. *GMA III*, 15 Wn. App. 2d at 307. GMA's failure does not warrant review by this Court.

In the trial court GMA made no argument that the State had acted with an improper purpose. GMA set forth its Excessive Fines Clause argument only in an untimely post-judgment motion to reduce the penalty. CP 4324-4330, 4358-60. Even then, GMA did not contend—much less establish—that the State had acted with an improper purpose or engaged in viewpoint discrimination. *See* CP 4324-4330, 4358-60. Thus, if this claim were reviewed at all, it should be reviewed only for manifest error. *See, e.g.*,

State v. WWJ Corp., 138 Wn.2d 595, 601, 980 P.2d 1257 (1999).

In its initial briefing to the Court of Appeals, GMA offered no argument that the State acted with an improper purpose. Neither did GMA make this argument in its initial Petition for Review to this Court. Rather, GMA first raised this claim in opposing the State's Petition for Review of the treble damages issue. Answer at 17-18.

On remand from this Court, prior to seeking reconsideration, GMA's only attempt to establish an impermissible purpose was a citation to *State ex rel. Public Disclosure Commission v. Food Democracy Action!*, 5 Wn. App. 2d 542, 427 P.3d 699 (2018), in a statement of additional authorities. GMA could have sought leave to file supplemental briefing or expand the record. *See* RAP 9.10, 9.11, 10.1(h). It did neither.

GMA wrongly contends that the Court of Appeals decision in *Food Democracy Action!* establishes that the State acted with an improper motive here. Pet. at 13-15. But that opinion never discusses the facts of this case or offers any comparison. In reality, the State employed the same statutory formula for calculating the base penalty it sought in both cases. In both cases, the State sought a base penalty of $10,000 for every late report under former RCW 42.17A.750(1)(c), a $10 per day penalty for each affected report under former RCW 42.17A.750(1)(d), and a penalty equal to the amount concealed under former RCW 42.17A.750(1)(f). The primary

reason the base penalties sought differed was that GMA concealed the true source of well over $10 million in contributions, while FDA concealed the true source of less than $300,000. *See GMA II*, 195 Wn.2d at 476 ("Nearly all of the requested base penalty ($14 million) was attributed to 'the amount of funds that went unreported.' [CP] at 4002. This is a permitted statutory basis for determining a penalty." (citing former RCW 42.17A.750(1)(f))). Thus, the State treated GMA and FDA! identically in seeking the base penalty, it was the scope of their wrongdoing that differed.

The decision to seek treble damages against GMA but not FDA! is also well-supported by the record. The evidence of GMA's intentional conduct was much stronger and showed far more culpability. GMA is a large, sophisticated organization with large, sophisticated members, while FDA is a two-person operation gathering small donations from individuals. CP 2988. GMA acted with the specific purpose of concealing contributing members' identities, CP 4059 (¶ 47), *GMA II*, 195 Wn.2d at 470, and there was no comparable evidence as to FDA. GMA also directed its members to misleadingly respond to media inquiries and removed its membership list from its website. CP 4061 (¶ 65), 4065 (¶ 84). And GMA went ahead despite pointed questions and concerns from counsel about potential violations of state law, CP 4062-64 (¶¶ 68, 70, 73, 77), and provided counsel selective information to obtain favorable advice, CP 4053 (¶ 8), 4064-66 (¶¶ 80-82,

90), 4068 (¶ 102). The superior court found that "it is not credible that GMA executives believed that shielding GMA's members as the true source of contributions . . . was legal." CP 4068 (¶ 104). There is no comparable evidence that FDA! engaged in conduct anywhere near so culpable.

In short, GMA has failed to establish that the State singled it out based on its viewpoint and failed to preserve this argument in any event. GMA's tardy claim does warrant this Court's review.

C. GMA's Novel Chilling Argument Does Not Warrant Review

GMA's "chilling effect" argument provides no basis for review. Penalizing actors like GMA for misconduct does not chill any protected speech; rather, it deters concealment. While GMA was free to contribute to the No on 522 committee, it was not free to deprive Washington voters of the true "sources of election-related spending" and their ability to "make informed choices in the political marketplace." *Citizens United v. FEC*, 558 U.S. 310, 367, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). GMA's deliberate concealment is not constitutionally-protected conduct, and the penalty for that concealment was appropriately designed to deter future misconduct.

Moreover, GMA has not asserted a First Amendment defense to the penalty amount.[2] Instead, for the first time in this petition, it attempts to

[2] GMA did assert a First Amendment defense to being deemed a "political committee." CP 38-39. This Court rejected that argument. *GMA II*, 195 Wn.2d at 461-69.

import the First Amendment concept of "chilling speech" into the Eighth Amendment analysis. As the Court of Appeals correctly pointed out in response to an amicus brief, however, there is no authority from any court that supports GMA's argument. *GMA III*, 115 Wn. App. 2d at 306.

The cases GMA cited do not establish otherwise. Neither *United States v. Mongol Nation*, 370 F. Supp. 3d 1090 (C.D. Cal. 2019), nor *League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006), held that the Eighth Amendment incorporates a First Amendment analysis. In *Mongol Nation*, the court addressed the First and Eighth Amendment claims separately and, only *after* concluding that the proposed forfeiture was grossly disproportionate, noted that its conclusion also bolstered First Amendment values. *Mongol Nation*, 370 F. Supp. 3d at 1120. *League of Women Voters* did not even involve an Excessive Fines Clause argument.

GMA's unsupported argument thus does not present a significant question of constitutional law or an issue of substantial public interest that should be determined by this Court. *See* RAP 13.4(b)(3), (4).

V. CONCLUSION

GMA's unprecedented misconduct is what led to the appropriately large penalty in this case. There is no reason for this Court to grant review.

RESPECTFULLY SUBMITTED this 26th day of February 2021.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the above document, State's Answer To Petition For Review, to be served on counsel of record via the Court's electronic filing system.

DATED this 26th day of February 2021, at Olympia, Washington.

s/ Wendy R. Otto
WENDY R. OTTO
Legal Assistant

SOLICITOR GENERAL OFFICE

February 26, 2021 - 3:43 PM

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