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NO. 101844-4

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIM EYMAN, et al.,

Appellants.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

PAUL M. CRISALLI, WSBA #40681
S. TODD SIPE, WSBA #23203
Assistant Attorneys General
ERIC S. NEWMAN, WSBA #31521
Litigation Section Chief—Consumer Protection Division
OID No. 91157

PO Box 40111
Olympia, WA 98504-0111
(360) 709-6470
Paul.Crisalli@atg.wa.gov
Todd.Sipe@atg.wa.gov
Eric.Newman@atg.wa.gov
Attorneys for Respondent State of Washington

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I. INTRODUCTION

The Court of Appeals decision does not warrant review. The Court of Appeals thoroughly examined Eyman's litany of arguments, evaluating whether substantial evidence supported the superior court's detailed findings and whether those findings supported the legal conclusions. Following its fact-intensive review of the record, the Court of Appeals affirmed in part and reversed in part, and remanded to the superior court to further evaluate whether Eyman can pay the penalty.

Eyman presents no reason why this Court should grant review under RAP 13.4(b). He fails to raise many of the arguments he brought below. He does not challenge any factual findings, which are now verities, and he has abandoned many of the legal arguments he made below.

Eyman admits that most of the issues for which he seeks review are "ancillary." There is no reason for the Court to grant review to determine an "ancillary" issue. His other arguments focus on fact-specific legal analyses that do not demonstrate a

conflict among the appellate courts nor are of sufficient public importance to warrant this Court's review. The Court of Appeals produced a sound opinion addressing the factual and legal arguments unique to this case. Eyman fails to show issues that meet RAP 13.4(b). This Court should deny review.

II. STATEMENT OF THE CASE

Eyman does not seek review of the Court of Appeals' analyses that substantial evidence supported the superior court's findings. The superior court's factual findings are now verities on appeal.

A. After a History of Violating the Fair Campaign Practices Act, Eyman "Continued to Scheme to Make Concealed Payments to Himself for His Work on Initiative Campaigns" Using Third Parties

Eyman has a history spanning decades of violating the Public Disclosure Commission's (PDC) reporting requirements under the Fair Campaign Practices Act (FCPA). Ex 137. In 2002, he admitted using political contributions to benefit himself and his family, paying a penalty and agreeing never again to be a political committee treasurer or a signer on a committee's

account. Ex 137. The PDC advised Eyman that political contributions were reportable, even when for his and his family's personal expenses, as such payments enabled him to spend time assisting or promoting ballot initiatives. Ex 177. His accountant provided similar advice. RP (12/16/2020) 742-745.

But Eyman "continued to scheme to make concealed payments to himself for his work on initiative campaigns by funneling those payments through third parties." CP 4942. He failed to register as a political committee and to file reports with the PDC. CP 4942. Around 2003, Eyman's political committees hired Citizen Solutions to gather signatures for initiative campaigns. RP (12/16/2020) 846. In May 2010, unbeknownst to other committee members, Eyman asked Citizen Solutions to overcharge his committee by 50 cents per signature to collect an extra $150,000 as a kickback to Eyman. Ex 180.

In 2010, during an initiative campaign, Citizens Solutions' principals paid Eyman $86,000. Exs 24-30. Eyman identified these payments—diverted from contributions for signature

gathering—as "gifts" for his wife and three minor children, though his wife was unaware and did not know Citizen Solutions. RP (1/25/2019, Eyman, K.) 3-7. "[T]hese purported gifts were in fact concealed redirected political contributions for Defendant Eyman's personal use." CP 4944-45. Eyman referred to additional compensation, including $130,000 from a Citizen Solutions principal, as "gifts." Exs 182-83. Eyman wrote another principal asking for a "gift payment plan" to pay outstanding "gifts" for 2010 and 2011. Ex. 182.

In 2012, Eyman filed Initiative 1185, and his political committee used Citizen Solutions for signature gathering. Ex 153; RP (12/16/2020) 755. Without consulting the officers, Eyman negotiated the signature-gathering contract, again raising the price per signature for a personal kickback. Exs 82-87. Eyman instructed the officers to disregard statutory disclosure deadlines and hide the committee's finances to incentivize fundraising. Ex 90. Eyman emailed fundraisers and "falsely

represented that his committee had a shortfall of cash on hand." CP 4949.

At the campaign's close, Eyman received, through his company, Tim Eyman, Watchdog for Taxpayers LLC (Watchdog), $308,185 from Citizen Solutions. Exs 92, 335; RP (12/16/2020) 778. "That payment 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." CP 4951-52. Eyman never disclosed the payment to the Watchdog committee officers authorized to make contribution and expenditure decisions and never disclosed the kickback to the PDC. RP (12/16/2020) 778-79; Ex 579; RP (8/13/2018, Fagan, M.) 13; RP (8/14/2018, Fagan J.) 13-14. Eyman used those funds for personal expenses and funding another Eyman-supported initiative. Exs 90, 106, 158, 200-01, 355; RP (12/16/2020) 783; RP (2/3/2020, Jacob) 6-12, 19-21, 26. Donors believed the campaign needed money to qualify the initiative, and did not intend to compensate Eyman personally.

Donors were unaware Eyman funneled the funds to himself. RP (12/14/2020, Chandler) 539-543; RP (12/15/2020, Guadnola) 551-55; RP (12/15/2020, Hanon) 603-610.

In 2012, Eyman worked on the Initiative 517 campaign. RP (12/16/2020) 695, 886-87. Eyman's emails detailed his plans to siphon money by "loaning" money received from the I-1185 campaign to another organization, Citizens in Charge, to fund the I-517 campaign, hiding the funds' true source. Exs 89, 93, 106, 158, 355; RP (2/4/2019 Fagan, M.) 7-8; RP (2/4/2019, Fagan, J.) 5-7; RP (2/3/2020, Jacob) 6-12, 19-21, 26; RP (12/16/2020) 860-63, 888-89. Eyman contacted potential donors, asking for donations to Citizens in Charge, explaining their donations would be anonymous. Ex 106; RP (12/16/2020) 888-89. Eyman arranged with Citizens in Charge to repay the loan through Watchdog. Exs 161, 164, 166; RP (2/3/2020, Jacob) 28-33; RP (2/4/2020, Jacob) 11-16. Eyman intentionally concealed the true source of $182,806.38 in contributions by "laundering the contributions through Citizens in Charge." CP 4956.

After the PDC investigated the I-1185 and I-517 contributions, the State filed a complaint alleging Eyman's FCPA violations. CP 1-12. Eyman failed to respond to the State's first set of written discovery, prompting the court to compel Eyman to respond. CP 5746-47. Eyman refused, and the court found him in contempt beginning February 2018, ordering a $250 daily penalty. CP 196-98.

B. Eyman Willfully Refused to Produce Discovery, Leading to Non-Monetary Sanctions

With counsel, Eyman refused to provide responses about contributions. CP 1795-98. He provided copies of cancelled checks for two of his four bank accounts but refused to provide cancelled checks for the other two accounts. RP (11/17/2020) 231-36, 357-58; RP (12/14/2020) 434-36; CP 5358-368. The court denied multiple requests to purge contempt. CP 1795-98. By September 2018, Eyman had not complied, so the court doubled the daily penalty to $500. *Id.* Eyman still refused to produce discovery. *Id.*

The State learned that Eyman solicited donations to himself and his family to support his political activities without reporting those contributions to the PDC. Exs 107, 109-127, 167, 198, 355; RP (11/17/2020) 213-222. The State amended its complaint to add additional FCPA violations. CP 1059-075. Deposition testimony and bank checks showed contributors gave money to Eyman for his political work, which Eyman did not disclose. Ex 355; RP (1/24/2019, Nurse) 7; RP (3/29/2020, Freeman) 7-8.

In November 2018, the State asked for information related to gifts or donations for his political work. CP 5825-30. Eyman failed to respond, and the court found Eyman in contempt again in July 2019. CP 5863-65; CP 1167-69. The court declined to increase the daily penalty to $1,000, as monetary penalties did not incentivize Eyman to comply. *Id.* Eyman still refused to produce responsive information or documents. CP 1795-98.

In September 2019, the court ordered non-monetary sanctions, finding "the payments made to Defendant

Tim 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." CP 1797. "That matter is established for purposes of this action and requires no further proof by the State." *Id.* Eyman "willfully and deliberately violated the discovery rules as well as this Court's oral order" compelling discovery, failed to provide a reasonable explanation, and was still in contempt after eight motions to purge. CP 1795-96.

The court found the "State's ability to prepare for trial has been substantially and irreparably prejudiced by the Eyman Defendants['] failure to comply with their discovery obligations," when the State had to conduct discovery without valuable responsive information. CP 1796-97. The court considered and imposed lesser sanctions, totaling over $200,000, to no avail. CP 1797. "The lesser and then increased monetary sanctions imposed by this court have failed to induce the Eyman Defendants to fully and properly respond to written discovery,

despite those responses being more than two years late, and no sufficient alternative sanction has been identified, so the greater sanction of a finding under CR 37(b)(2)(A) is warranted." *Id.*

In February 2020, the superior court granted partial summary judgment to the State, finding that Eyman solicits contributions to compensate himself for promoting ballot initiatives and expects to receive funds toward electoral goals, all of which the FCPA requires him to report. CP 2852-54. Eyman is a continuing political committee, failed to register, and was at least 2,706 days late to report to the PDC. *Id.* He failed to report $766,447 in contributions and failed to file reports for 55 months, making the reports a combined 173,862 days late. *Id.* The court found Eyman concealed $766,447. *Id.*

The superior court rejected five attempts by Eyman and intervenors to undo the non-monetary sanctions and partial summary judgment. CP 2190, 6154-5, 2807-833, 3246-48. This Court's Commissioner denied discretionary review, ruling that "Eyman's egregious history of noncompliance amply supported

the superior court's explicit finding that Mr. Eyman's violation of the discovery rules and the court's orders was deliberate and willful." CP 7112. The Commissioner rejected Eyman's First Amendment challenge. CP 7113.

C. The Superior Court Found Eyman Blatantly Violated the FCPA, Which the Court of Appeals Affirmed

Following a nine-day trial, the court found that Eyman committed "numerous and blatant violations of the FCPA," that "it 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," and that Eyman had a pattern of intentionally concealing, deceiving, and misleading. CP 4965-67. Eyman was a continuing political committee, failed to register in compliance with the FCPA, and received or expected to receive contributions in support of ballot propositions. CP 4963-64.

The court found that the potential total base penalty was at least $5,754,987.43. CP 4965. Although the facts warranted the maximum penalty, the court assessed a $2,601,502.81 penalty.

CP 4967. Eyman acted intentionally, and his conduct was extensive and egregious, but the court declined to treble damages. CP 4968. The court awarded the State its costs and fees, totaling $2,891,667.02. CP 5306-310.

The court enjoined Eyman from receiving payments from anyone providing or planning to provide paid services to an Eyman-associated political committee and requiring Eyman to report gifts, donations, or other funds Eyman receives for work supporting ballot initiatives. Eyman was also enjoined from managing, controlling, negotiating, or directing a political committee's financial transactions. CP 4969-971, 5309. The court prohibited Eyman from: being a treasurer or deputy treasurer, approving disclosure statements, accepting or taking possession of contributions, binding political committees, participating in the decision to transfer funds from one political committee to another, and soliciting directly contributions for himself or his family for his political work without establishing a political committee and reporting such contributions.

CP 4969-971. The injunction does not prohibit Eyman from advocating for ballot measures, which he continued to do since the entry of the injunction. [1]

Eyman appealed, seeking direct review and a stay of the injunction. CP 5460-5537. The Supreme Court Commissioner denied the stay, concluding no debatable issues warranted a stay. After Eyman brough further unsuccessful motions, this Court transferred the case to the Court of Appeals.

With few minor exceptions unrelated to this petition, the Court of Appeals affirmed. The court held that all but one unrelated finding was supported by substantial evidence. The court rejected Eyman's statutory and constitutional challenges. Eyman seeks review.

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[1] *See* Washington Secretary of State web site, "Proposed Initiatives to the People – 2023," https://www2.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2023&t=p. *See also* "Proposed Initiatives to the Legislature – 2023," https://www2.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2023&t=l.

III. ARGUMENT

A. Eyman Is a Continuing Political Committee

The Court of Appeals correctly held that Eyman is a continuing political committee. Eyman misreads the statutes in arguing that he cannot serve as a continuing political committee. As the Court of Appeals explained, he is a political committee because he is "any person . . . having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition" under RCW 42.17A.005(41) and thus satisfies the "contribution prong." *State v. Grocery Manufacturers Association*, 195 Wn.2d 442, 454, 461 P.3d 334 (2020) (*GMA* I). He personally solicited contributions with the express purpose of supporting either a specific ballot initiative or to allow him to continue to work on ballot initiatives.

While the Court of Appeals read this statute to be ambiguous, it properly held that the legislative purposes underlying the FCPA show that the indirect support that occurred

here meets the legislature's intended meaning of a political committee. As the court explained, there are two primary policy objectives underlying the FCPA. First, political campaign and lobbying contributions and expenditures should be fully transparent to the public. Second, the public's right to know of political campaign financing far outweighs any right that these matters remain secret and private. It would undermine the purpose of the statute to allow an individual—like Eyman here—to avoid disclosure requirements by soliciting contributions for campaigns but using the funds for personal uses.

As the Court of Appeals held, by becoming a political committee, Eyman was no longer acting as an individual, but was a "continuing political committee" under the FCPA. RCW 42.17A.005(14) (defined as "an organization of continuing existence not limited to participation in any particular election campaign or election cycle."). This reading is consistent with the legislature's purpose that the FCPA be broadly construed. RCW 42.17A.001. The harm to voters is not lessened because

the statutory violations were committed by an organization comprised of a single individual rather than two or more individuals. The Court of Appeals correctly held that Eyman is a continuing political committee.

The cases cited by Eyman do not show a conflict but instead buttress the Court of Appeals' analysis. Those cases show that soliciting for contributions *or* making expenditures qualify an entity as a political committee. *State v. (1972) Dan J. Evans Campaign Committee*, 86 Wn.2d 503, 504-09, 546 P.2d 75 (1976). The public undisputedly has a right to know funding sources for political campaigns. *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1007 (9th Cir. 2010). There is no conflict with this Court's decisions or among the appellate courts, and Eyman fails to meet any other RAP 13.4(b) factor.

B. The Superior Court's Non-Monetary Sanction Was Appropriate

Eyman's argument about the non-monetary discovery sanction does not merit review. The Court of Appeals did not reach this issue by addressing the merits of Eyman's "continuing

political committee" argument, so Eyman fails to meet any of the factors warranting review. In any event, Eyman's arguments are devoid of merit and do not warrant review.

Eyman willfully and intentionally violated the discovery rules by refusing to respond to discovery. CP 1795-1796. The State sought information on certain funds Eyman received to determine whether they were contributions. CP 1174-1189. Even after the compel order, Eyman didn't respond, leading the court to sanction him $250 a day. CP 1796. Eyman refused to respond, so the court increased the daily sanction to $500. *Id.* Eyman still refused to respond, but the court rejected a further increase in the daily sanction amount, finding that the increase would not induce Eyman to comply with the rules. CP 1797. After all those months and efforts and court orders, the superior court entered an order detailing the necessity for non-monetary sanctions: "the payments made to Defendant Tim Eyman . . . are hereby found to be 'contributions' in support of ballot initiatives*."* *Id*. Based

on this finding and other undisputed facts, the superior court granted partial summary judgment.

As this Court's Commissioner explained, the superior court properly followed the *Burnet* factors to issue the sanction. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). Eyman's "egregious history of noncompliance" amply supported the superior court's explicit finding that following all the *Burnet* factors "[a] harsh non-monetary penalty was fully justified." Ruling at 9. As the superior court found, the State suffered prejudice when it had to conduct depositions and other pretrial discovery without valuable information that Eyman withheld, and he "willfully thwarted the State's efforts to prepare for trial, causing significant delay and an obvious waste of resources." Ruling at 9. The superior court considered lesser sanctions—it sanctioned Eyman more than $200,000 and he still refused to comply. The superior court properly exercised its discretion when entering the non-monetary sanction.

Eyman was pro se only for 9 of the 27 months he was in contempt. He had counsel when he responded incorrectly to the first set of discovery, and he had counsel since at least October 2019. The superior court found Eyman could provide responses, even while pro se. CP 1795-1796.

Next, the superior court *found* that payments to Eyman totaling $766,447 were political contributions. CP 1797. Even if that were a legal conclusion, CR 37(b)(2)(A) does not preclude the court from making factual findings, but allows it to make an order in regard to the failure as is just and that the "matters regarding which the order was made or any other designated facts" shall be established for purposes of the action. CR 37(b) allows courts to enter default judgments, which inherently prevents a party from making legal arguments.

Eyman's bizarre argument that there was no link between the discovery sought and the sanction is untenable. The sanction can establish matters or facts "in accordance with the claim,"

CR 37(b)(2)(A), and this sanction focused on aspects of the State's claims to which Eyman provided incomplete discovery.

Last, Eyman repeats his slander that the State's investigator, Tony Perkins, committed perjury. Perkins truthfully testified about reviewing cancelled checks for particular payments, but he did not and could not testify to all payments, as Eyman didn't produce that information. RP (11/17/2020) 231-36, 357-58; RP (12/14/2020) 394-96, 434-36; CP 5358-368. Not until much later in the litigation did the State obtain access to more cancelled checks, and even then, the State did not receive all requested information. CP 5364. The superior court and appellate courts rejected the arguments within Eyman's repeated motions, and this Court should follow suit. This issue doesn't merit review.

C. Eyman Engaged in a Kickback Scheme, Not Simply Dealing with a Vendor

Eyman fails to explain why this Court should review his vendor argument. It is easy to see through his façade, that his relationship with Citizen Solutions was to create a kickback to

benefit himself. Those are the unchallenged findings of the superior court. As Eyman's own emails explained, he arranged a deal where Citizen Solutions charged Eyman's political committee extra, and unbeknownst to Eyman's other partners, Citizen Solutions paid Eyman the extra amount for his work on ballot initiatives. CP 4946-4953. Eyman neglects to mention that superior court finding. His own emails detail the scheme.

Eyman is also wrong on the law. The FCPA focuses on whether a transaction involves a contribution or an expenditure supporting a ballot initiative, not on whether the transaction is with a vendor or another party. *See* RCW 42.17A.235. No FCPA provision categorically excludes transactions with vendors. There is no reason for this Court to review this argument.

D. Eyman's Loan Argument Is a Red Herring

The Court can disregard Eyman's loan argument because the Court of Appeals agreed with Eyman that personal loans do not need to be reported to the PDC. *State v. Eyman*, 24 Wn. App. 2d 795, 828, 521 P.3d 265 (2022). The Court held,

however, that substantial evidence showed that his payments were made "in such a manner as to conceal the identity of the source of the contribution," and as such, were subject to the reporting requirements. *Id.* at 828; RCW 42.17A.435. Eyman does not now challenge that holding, so review should be denied.

E. The FCPA Does Not Regulate Only Treasurers

Eyman next tries to gut the FCPA by arguing that only treasurers can be liable for disclosures/reporting violations by a political committee. As the Court of Appeals held, Eyman's argument is at odds with the legal framework and the facts in this case. *Eyman*, 24 Wn. App. 2d at 825-26.

RCW 42.17A.750(1) provides that a "person"—not a candidate, treasurer, or political committee—who violates the FCPA is subject to civil penalties. Thus, a "person," acting as a political committee officer, can be held responsible for the committee's FCPA violations.

The facts here bear that out. Eyman orchestrated the entire scheme. The unchallenged superior court findings make clear

that Eyman was a person authorized to make decisions for his political committees. CP 4946-4956. He knew about the reporting obligations, instructed the treasurer and others to not follow those reporting requirements, and knew that the filings to the PDC were wrong but did not correct them. *Id*. Acting within that authority and making those orders, Eyman was the actual person violating the PDC, and as the Court of Appeals recognized, the FCPA properly holds him accountable for his misconduct.

Further, no statute vests the reporting authority in the treasurer alone, but rather the reporting obligation lies with the committee or candidate. And reading the statute as Eyman proffers would create a massive loophole that would frustrate the FCPA's purpose. A political committee member could purposefully give false information to an unwitting treasurer, using them as a conduit, and no one would be held accountable for the intentional false reporting. The Court should deny review.

F. The FCPA Authorizes Injunctive Relief

Eyman makes a blanket argument that every provision of the injunction exceeded its statutory authority. At the outset, it is undisputed that RCW 42.17A.750(1)(i) allows the superior court to "enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein." That is what the superior court did in issuing its injunction, which the Court of Appeals largely affirmed. The Court of Appeals only held that two specific provisions lacked statutory support. While the State disagrees with that analysis, it does not believe review is warranted here.

Eyman makes no specific argument as to why any other part of the injunction lacks authority. Simply stating that there is no authority, with nothing more, is insufficient to establish an issue warranting this Court's review. Just like before the Court of Appeals, "Eyman presents no meaningful argument regarding them," *Eyman*, 24 Wn. App. 2d at 846 n.7, so this Court need not review this undeveloped, unsubstantiated argument.

G. The Court Properly Awarded the State Its Costs and Fees

The Court of Appeals correctly affirmed the superior court's award of costs and fees for litigating on behalf of the PDC. In 2018, the legislature amended RCW 42.17A.765 to provide that the Attorney General may bring civil actions in the name of the State "[o]nly after a matter is referred by the commission." ESHB 2938, 65th Leg., Reg. Sess. § 14 (2018).

The new RCW 42.17A.780 provides, in pertinent part, that "[i]n 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." After receiving a referral from the PDC, the Attorney General brought the present action under this chapter, litigating on behalf of the PDC. RCW 42.17A.755, .765(1)(a)(i). If the State prevails, fees and costs may be awarded pursuant to RCW 42.17A.780.

The Attorney General is the only one with responsibility to litigate on behalf of the PDC, so an award of costs and fees must be available to give the statutory language any meaning. It

is likely for this reason, as the Court of Appeals noted, that this Court cited RCW 42.17A.780 when awarding fees to the State in *GMA* I. Eyman's argument would turn the fee statute into a nullity, which is why it was properly rejected.

H. Eyman's Constitutional Arguments Are Meritless

Eyman recycles his argument that enforcement of the FCPA violates his First Amendment rights. Not only has this Court upheld the FCPA against similar challenges, appellate courts have specifically rejected Eyman's challenges.[2] *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006).

Contrary to Eyman's arguments, it is well-established that the FCPA's reporting and disclosure requirements are subject to exacting scrutiny, not strict scrutiny. *GMA* I, 195 Wn.2d at 461. Eyman cites to the rule of lenity in cases addressing criminal

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[2] *GMA* I, 195 Wn.2d 442; *Utter v. Building Industry Ass'n of Washington*, 182 Wn.2d 398, 415, 341 P.3d 953; *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 166 P.3d 1174 (2007); *Dan J. Evans*, 86 Wn.2d at 508; *Brumsickle*, 624 F.3d 990.

provisions to argue that strict scrutiny applies.[3] Pet. at 30. But Eyman conflates statutory construction with the First Amendment's constitutional analysis. The Court should reject this confusion.

Eyman argues that the FCPA is unconstitutionally vague because the Court of Appeals held that several provisions were ambiguous. This argument ignores the difference between an unconstitutionally vague statute and interpreting an ambiguous statute. Here, the Court of Appeals held that FCPA provisions were ambiguous because it concluded there were two reasonable interpretations. Utilizing statutory construction tools, it resolved the ambiguity by looking to other statutory provisions and the

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[3] *Leocal v. Ashcroft* is not relevant, as here, unlike in that case, the legislative purpose and language make clear that the FCPA favors disclosure of funding sources for political committees over secrecy of political committees, even when in conflict. 543 U.S. 1, 11 n.8, 125 S. Ct. 377, 160 L.Ed.2d 271 (2004). The FCPA must be read liberally to effectuate its purpose. These are not ambiguous criminal statutes like in *Leocal*. This Court also reversed *Internet Comm. & Entertainment v. State*, 148 Wn. App. 795, 201 P.3d 1045, *reversed by* 169 Wn.2d 687 (2010).

underlying and express policy objectives. That process does not render a statute vague, so there is no constitutional infirmity.

Eyman next argues that he has a First Amendment right to solicit and use charitable donations without disclosing the donor names, and the FCPA's requirements for political committees violates that right. But as the Court of Appeals pointed out, "he 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 of the names of donors would subject them to threats or harassment." *Eyman*, 24 Wn. App. at 843. The cases he cites are similarly inapposite, as they address consumer protection claims against a charity organization that receives and sells used goods, not an individual who receives contributions in support of ballot initiatives. *See City of Lakewood v. Willis*, 186 Wn.2d 210, 375 P.3d 1056 (2016); *State v. TVI, Inc.*, ___ Wn.3d ___, 524 P.3d 622 (2023).

Eyman laments about the requirements he has to fulfill as a continuing political committee. But these requirements exist only because Eyman structured himself to be a continuing political committee. Any additional injunctive provisions were entered because of Eyman's repeated egregious FCPA violations.

The reporting requirements likewise present no unconstitutional burden on Eyman's right to free speech. *See State v. Grocery Manufacturers Association*, 195 Wn.2d 442, 461-62, 461 P3d 334 (*GMA* II); *Voters Educ. Comm.*, 161 Wn.2d at 492. As this Court explained, "disclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption." *Voters Educ. Comm.*, 161 Wn.2d at 482-83 (quoting *Buckley v. Valeo*, 424 U.S. 1, 68, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)).

For this reason, *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238,

107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) (*MCFL*), does not help Eyman. *MCFL* concerned an incorporated entity subject to "more extensive requirements and more stringent restrictions than it would be if it were not incorporated." *Id.* at 254. The government interest in *MCFL* was to control the effect of corporate money in politics. *Id.* at 257. By contrast, the government interest here is far weightier: protecting the public's right to information during the election process, which is itself an important First Amendment right. *See Voters Educ. Comm.*, 161 Wn.2d at 483; *see also* RCW 42.17A.001(10).

As the Court of Appeals explained, the government interest is particularly strong here because Eyman has a history of promoting anonymous donations and moving funds between his campaigns without properly disclosing them. The public has a strong interest in knowing the funding sources for Eyman's political campaigns, just as donors have an interest in knowing that their money is being appropriately used for the intended campaign. Eyman fails to show that this issue warrants review.

I. The State Should Be Awarded Its Costs and Fees for Answering This Petition

Pursuant to RAP 18.1 and RCW 42.17A.780, the State requests its reasonable attorneys' fees and costs in an amount determined after this Court denies review or enters a favorable decision.

IV. CONCLUSION

The Court of Appeals issued a careful opinion addressing Eyman's many legal and factual arguments. Eyman fails to show that analysis meets the RAP 13.4(b) factors. The Court should deny review.

This document contains 4,955 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of April 2023.

ROBERT W. FERGUSON
Attorney General

/s/ Paul M. Crisalli
PAUL M. CRISALLI, WSBA #40681
S. TODD SIPE, WSBA #23203
Assistant Attorneys General
ERIC S. NEWMAN, WSBA #31521
Litigation Section Chief—Consumer Protection Division
Paul.Crisalli@atg.wa.gov
Todd.Sipe@atg.wa.gov
Eric.Newman@atg.wa.gov

OID No. 91157
7141 Cleanwater Drive SW
PO Box 40111
Olympia, WA 98504-0111
(360) 709-6470
Attorneys for Respondent State of Washington

WA STATE ATTORNEY GENERAL'S OFFICE, COMPLEX LITIGATION DIVISION

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