NO. 101844-4

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIM EYMAN, et al.,

Petitioners.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO AMENDED AMICUS CURIAE MEMORANDUM OF GLEN MORGAN IN SUPPORT OF APPELLANTS

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I. INTRODUCTION

Glen Morgan never mentions the RAP 13.4 factors in explaining why review is appropriate. Instead, Morgan raises new arguments not addressed by Tim Eyman's petition for review, relying on hypothetical scenarios. Morgan's Amended Amicus Memorandum (Memorandum) lacks merit. Contrary to his claim and as demonstrated by the Court of Appeals, the statute's plain text and legislative intent allow a "continuing political committee" to consist of one individual who structures his finances and professional life to promote ballot initiatives. Morgan does not appear to structure his finances and professional life in the same way as Eyman, and there is no indication Morgan engaged in the same schemes to self-deal and conceal as Eyman.

II. ARGUMENT

A. Morgan Fails to Show That the RAP 13.4 Factors Apply to His Request for Review

The Court should disregard Morgan's Memorandum because it fails to address the relevant question before this Court,

which is whether review is warranted under the factors outlined in RAP 13.4(b). The Court is left in the dark as to what factors Morgan thinks is at issue.

B. Morgan Raises New Arguments That Were Not Briefed nor Argued Below by Eyman

Morgan's Memorandum raises new arguments and hypotheticals both unraised by Eyman and unrelated to this specific case. The Court has held on numerous occasions that "[this Court] will not address arguments raised only by amicus." *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003); *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 458 n.2, 461 P.3d 334 (2020) (*GMA* I); *City of Seattle v. Evans*, 184 Wn.2d 856, 861 n.5, 366 P.3d 906 (2015).

Here, Morgan raises multiple new arguments that were neither briefed nor argued by either party. Eyman does not argue that the Fair Campaign Practices Act (FCPA) will dissuade the public from participating in the democratic process. Mem. at 10-11. Eyman does not argue that being designated as a

continuing political committee would infringe on his family's privacy rights. *Id.* He does not argue that the reporting requirements of the FCPA would cause "financial asphyxiation" to an individual designated as a continuing political committee. *Id.* at 6-7.

The vast majority of Morgan's arguments were not raised by Eyman and were not before the Court of Appeals. Because Eyman never raised these new arguments and the parties did not have an opportunity to address them, the Court should reject Morgan's attempt to raise them.

C. Morgan's Arguments Lack Merit

Even setting aside the above arguments, Morgan's Memorandum overlooks the plain text and intent of the FCPA and his arguments defy common sense. The Court should disregard them.

1. Under the FCPA, an individual can be considered a continuing political committee

Morgan misreads the statutes in arguing that Eyman is not a continuing political committee. Morgan states that because

Eyman is an individual person, he should not be considered a committee and thus is not required to file PDC financial reports. This runs contrary to case law and the intent of the legislature. The Court of Appeals correctly held that Eyman is a political committee and, thus, a continuing political committee. Eyman 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." *GMA* I, 195 Wn.2d at 455; *see also Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 413, 341 P.3d 953 (2015). A "[c]ontinuing political committee" is a "political committee that is an organization of continuing existence not limited to participation in any particular election campaign or election cycle." RCW 42.17A.005(14).

Further, by becoming a political committee, Eyman was no longer acting as an individual but was a continuing political committee under the FCPA. *State v. Eyman*, 24 Wn. App. 2d 795,

838, 521 P.3d 265 (2022). This reading is consistent with the legislature's purpose to construe the FCPA broadly. RCW 42.17A.001. The Court of Appeals correctly held that Eyman is a continuing political committee.

2. Morgan's slippery slope arguments are misplaced

Contrary to Morgan's suggestion, individuals will rarely be treated as continuing political committees. In general, officers of political committees expect to receive contributions and make expenditures *for the organization as a whole*, not themselves individually. The Court of Appeals expressly declined to interpret the FCPA as requiring every person who solicits contributions to a campaign committee to register as a political committee. *Eyman*, 24 Wn. App. 2d at 838. The reason that Eyman is appropriately treated as a continuing political committee is his complete disregard for the FCPA's requirements, his solicitation of contributions to *himself*, his commingling of personal and campaign funds, and his planning

and ultimate concealing of his self-dealing donations without disclosing his actions. Such brazen misconduct is—one hopes—confined to Eyman. Morgan does not suggest that either he or any of the individuals identified in his amicus memorandum have engaged in similar misconduct. The Court of Appeals correctly recognized that Eyman's situation is specific and unique. *See id.* at 826.

3. The FCPA withstands constitutional challenges

This Court has repeatedly rejected similar First Amendment challenges to disclosure requirements, including involving funding for promoting or opposing initiatives. *See, e.g.*, *GMA* I, 195 Wn.2d 442; *Utter*, 182 Wn.2d at 415, 427; *Voters Educ. Comm. v Wash. State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 491-92, 166 P.3d 1174 (2007); *see also State ex rel. Wash. State Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006). Here, Morgan applies the incorrect scrutiny standard to the FCPA. The FCPA's reporting and disclosure requirements are consistently subject to

exacting scrutiny, not strict scrutiny. *Eyman*, 24 Wn. App. 2d at 842 (citing *GMA* I, 195 Wn.2d at 461). Under the exacting scrutiny analysis, there must be a "substantial relationship" between the statutory requirement and a "sufficiently important" governmental interest. *Id.*

The reporting requirements of the FCPA are not unconstitutionally burdensome, as Morgan argues, citing *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 255-56, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) (*MCFL*). *MCFL* does not apply here. *MCFL* pertained to the governmental interest in controlling the effects of corporate money in politics; the entity in question was subject to more stringent restrictions as an incorporated entity than had it not been incorporated. *See id.* at 254, 257. But here the government interest is in protecting access to important election information, and "the right to receive information is the fundamental counterpart of the right of free speech." *GMA* I, 195 Wn.2d at

462 (quoting *Fritz v. Gorton*, 83 Wn.2d 275, 296, 517 P.2d 911 (1974)).

III. CONCLUSION

Morgan fails to show that the RAP 13.4 factors apply to his request for review, he raises new arguments that were not considered by the Court of Appeals, and his arguments lack merit.

This document contains 1,154 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 26th day of June 2023.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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