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NO. ___96476-9____________

Court of Appeals No. 49932-1-II

SUPREME COURT OF THE STATE OF WASHINGTON

FOOD DEMOCRACY ACTION! and FOOD DEMOCRACY ACTION! YES ON I-522 COMMITTEE TO LABEL GMOs IN WASHINGTON

Petitioner,

v.

STATE OF WASHINGTON, ex rel., WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF THE PETITIONERS

Petitioners Food Democracy Action! ("Food Democracy") and Food Democracy Action! Yes on I-522 Committee to Label GMOs in Washington (the "Committee") are Defendants and Appellants below. Food Democracy is a small, Iowa-based organization dedicated to building a healthy and sustainable food system. Food Democracy registered the Committee in 2013 after it learned that it had inadvertently failed to comply with Washington campaign finance disclosure requirements.

II. DECISION BELOW

Food Democracy seeks review of the Court of Appeals' published decision rendered in *State ex rel. Wash. State Pub. Disclosure Com'n v. Food Democracy Action!*, No. 49932-1-II (October 2, 2018), which affirmed the Thurston County Superior Court's grant of partial summary judgment in favor of Plaintiff Washington State Public Disclosure Commission. A copy of the decision is included in the Appendix at 1-15.

III. ISSUES PRESENTED FOR REVIEW

1. Does the decision below conflict with other published Court of Appeals decisions, which have held that a violation of RCW 42.17A.435 is distinct from reporting violations and must be supported by evidence of a party's specific intent to conceal the source of contributions or the recipient of expenditures?

2. Does the decision below involve an issue of substantial public interest, where its interpretation of the meaning of the term "concealment" in RCW 42.17A.435 would result in making political committees that inadvertently fail to submit reports liable for statutory violations beyond the mere failure to report and thereby potentially subject to additional, duplicative penalties?

3. Does the decision below involve a significant question of law under the United States and Washington Constitutions where, assuming the Court of Appeals' construction of RCW 42.17A.435 is correct, the availability of additional, duplicative penalties on a strict liability basis against inadvertent non-reporting political committees would drastically deter the exercise of constitutionally-protected speech and associational rights associated with electoral campaign activity?

IV. STATEMENT OF THE CASE

In 2013, Food Democracy was made aware of I-522, a Washington initiative to require labeling genetically-modified organisms in food, and decided that the Initiative aligned with its mission. Appx. at 2. In July, 2013, Food Democracy solicited donations to help pass I-522 in four email newsletters to its members. *Id.* It then directly contributed funds raised through these solicitations, totaling $200,000, to the Yes on I-522 campaign, which reported these contributions in full. *Id.* Food Democracy

was unaware of the provisions of Washington's Fair Campaign Practice Act (FCPA), which required it to immediately register as a political committee and to report its contributions and expenditures to the Public Disclosure Commission (PDC). *Id.* at 2. Indeed, it had no prior familiarity with Washington's campaign finance laws whatsoever. *Id.*[1]

Once it became aware of its noncompliance with the FCPA's registration and reporting requirements, Food Democracy admitted full responsibility and promptly hired Washington counsel to help it comply with its obligations. *Id.* at 3. Thereafter, it registered the Committee, filed contribution and expenditure reports, and cooperated with a PDC investigation into its reporting and registration failures. *Id.* at 4.

On December 16, 2014, the State of Washington, through the PDC, filed a complaint in Thurston County Superior Court, alleging that Food Democracy violated the FCPA not only by failing to timely register as a political committee and file disclosure reports, but also by concealing the identity of the individuals who made contributions through it to the Yes on I-522 campaign. *Id.* at 4; CP 5. In its Answer, Food Democracy admitted the registration and reporting violations but denied the concealment allegations. *Id.* at 4; CP 10.

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[1] The Treasurer for the Yes on I-522 Committee, responsible for compliance with PDC requirements, was Philip Lloyd, who, perhaps not coincidentally, also has served as the Treasurer for the election campaigns of Attorney General Robert Ferguson.

The PDC moved for partial summary judgment, which the Superior Court granted. *Id.* at 4; CP 40. A trial on damages followed, in which Food Democracy did not appear. *Id.* at 5. At no point prior to or at trial did the Superior Court find that Food Democracy's violations were knowing or intentional, and the PDC abandoned that allegation. *Id.* The trial court entered judgment against Food Democracy and assessed a penalty of $319,281.58 against it. *Id.* at 5; CP 67. Food Democracy appealed that judgment, which the Court of Appeals affirmed in the decision below.

V. ARGUMENT

A. Summary of Argument

The Court should accept discretionary review of the Court of Appeals decision pursuant to RAP 13.4(b). Review is warranted under 13.4(b)(2) because the decision conflicts with the Court of Appeals' decision in *State ex rel. WA. State Pub. Disclosure Com'n v. Permanent Offense*, 136 Wn. App. 277, 150 P.3d 568 (2006), *rev. denied*, 162 Wn.2d 1003, 175 P.3d 1092 (2007). *Permanent Offense* demonstrates that concealment and failure to report are conceptually distinct FCPA violations, and that to prove the latter, a plaintiff must adduce sufficient evidence of a defendant's specific intent to conceal the source of contributions or recipient of expenditures. The approach in *Permanent Offense* is supported

by the statute's plain language, its structure and legislative history, as well as the doctrine of constitutional avoidance.

Review is also warranted pursuant to RAP 13.4(b)(4) because the decision involves an issue of substantial public interest that should be determined by the Supreme Court. The holding in the decision below broadly affects all actual and putative political committees. If, as the Court of Appeals found, every failure to report is – regardless of intent – also an act of "concealment," then almost all cases currently pending before the PDC potentially involve unlawful concealment which may be punished by the imposition of additional penalties, even though the vast majority of cases involve inadvertent, belatedly-filed reports. Further, organizations that in good faith do not consider themselves political committees may suddenly find themselves at risk of being penalized vast sums of money should the PDC determine that these honest suppositions were wrong.

Finally, this Court should accept review pursuant to RAP 13.4(b)(3) because the case involves a significant question of law under the United States and Washington Constitutions. If this Court abides the interpretation of RCW 42.17A.435 offered in the decision below, multiple, duplicative penalties will become available to punish reporting violations without inquiring into a committee's knowledge or motive – i.e., on a strict liability basis. That outcome will deter citizens from exercising their constitutional

right to associate with political committees and engage in the protected speech of soliciting political contributions. Committees will instead forgo engaging in such activities out of fear of incurring draconian monetary penalties that would result from unwittingly forgetting to submit disclosure reports. A chilling effect of this magnitude constitutes an impermissible restriction on First Amendment and Article 5 rights.

B. The Decision Conflicts with a Published Court of Appeals Decision.

Review is warranted under RAP 13.4(b)(2) because the decision conflicts with a published decision of the Court of Appeals. At issue is the proper construction of RCW 42.17A.435, which provides that:

> 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.

The decision below held that this provision "does not require [that] concealment be intentional or knowing" in order to find a violation thereof. Appx. at 8.

Conversely, in *Permanent Offense*, the Court of Appeals upheld a trial court's determination following a bench trial that the defendant

violated the same provision,[2] but only because the PDC introduced sufficient evidence that the defendant had a "specific intent to conceal" and took steps to "implement her scheme." *Permanent Offense*, 136 Wn. App. at 289. The PDC proved that the defendant, the treasurer of a political committee, coordinated with another committee member to compensate the latter for his campaign work by forming a sham corporation, which would nominally provide campaign services to the committee. *Id.* at 280, 289. Although the treasurer defendant reported the monthly payments to the corporation, she did not disclose (a) that her co-conspirator was the recipient of these fees; (b) that she served as the corporation's secretary and generated the invoices billed to the committee; or (c) that those invoices were pre-arranged to satisfy her co-conspirator's desired salary, and bore no relation to his actual services rendered. *Id.*

This evidence "established" that the treasurer defendant "acted in a deliberate manner so as to effect concealment," making the trial court's finding reasonable. *Id.* (internal quotation marks omitted).[3] Intent was

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[2] *Permanent Offense* technically involved an earlier version of the provision, then codified at RCW 42.17.120, but which was identical to the version at issue here in content. *Permanent Offense*, 136 Wn. App. 277 at 288.

[3] Not only did *Permanent Offense* consider the meaning of the term "concealment" under RCW 42.17A.435, it did so specifically with respect to that word's usage in the provision's terminal clause – "or in any other manner so as to effect concealment" – the very same clause italicized and relied upon by the court below in deciding that the provision contained no intentional requirement. *Compare* No. 49932-1-II, Slip Opinion at 7 *with Permanent Offense*, 136 Wn. App. 277 at 288-89. The immediate prompt in *Permanent Offense* for examining this clause was to rebut the defendant's theory that the statute prohibited

critical to the trial court's finding, and in turn to the appellate court's affirmance, because without more, "using a corporate structure to provide services to the PAC was not itself a violation of the law." *Id.* at 289. Moreover, the Court of Appeals evaluated the trial court's conclusion that the defendant violated statutory reporting obligations, then codified at RCW 42.17.080 and 42.17.090, separately from the concealment question. *Id.* at 289-92. The court affirmed that finding without investigating the defendant's subjective motivations. *Id. Permanent Offense*'s distinct treatment of concealment and failure to submit disclosure reports further demonstrates that the two kinds of violations are not interchangeable.

Although *Permanent Offense* did not state expressly that a deceptive intent is a necessary feature of "concealment" under RCW 42.17A.435, that implication is inescapable in light of the appellate court's reasoning on the sufficiency of the evidence. Nonetheless, the court below failed to address this aspect of *Permanent Offense*, leaving the tension between the two decisions unresolved.

The need to reconcile these opinions is amplified by the fact that *Permanent Offense*'s focus on intent is more consistent with the provision's

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concealing the source of contributions, but not the ultimate recipient of expenditures. *Id.* at 288. Once it determined that this clause covered concealing such recipients, the court turned to whether the evidence supported concealment under the "any other manner" clause. *Id.* at 289.

plain meaning, statutory history, and structure, and the canon of constitutional avoidance. First, a fair reading of RCW 42.17A.435's text shows that a purposive connotation unambiguously attaches to the statutory meaning of "concealment."[4]

The ordinary and legal definitions of the words "conceal" and "concealment" use descriptors that either demand or strongly imply a deliberate effort to prevent disclosure. *See* Concealment, BLACK'S LAW DICTIONARY (10th ed. 2014) ("1. The act of preventing disclosure or refraining from disclosing; esp., the injurious or *intentional* suppression or nondisclosure of facts that one is obliged to reveal; cover-up. 2. The act of removing from sight or notice; hiding") (emphasis added); Conceal, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981) ("1. to prevent disclosure or recognition of; avoid revelation of; refrain from revealing; withhold knowledge of…."); Restatement (Second) of Contracts § 160 cmt. a (1979) ("Concealment is an *affirmative act* intended or known to be likely to keep another from learning of a fact of which he would otherwise have learned. Such affirmative action is always equivalent to a misrepresentation and has any effect that a misrepresentation would have") (emphasis added).

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[4] "Where the plain language of the statute is unambiguous, the statute's plain meaning should be enforced." *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 268, 236 P.3d 193 (2010).

The relationship between the term "concealment" and the provision as a whole also confirms this reading. RCW 42.17A.435 is divided into two clauses, the first of which bars making contributions or incurring expenditures through specific devices "in such a manner as to conceal the identity of the source of the contribution." RCW 42.17A.435. The prohibited devices include using a "fictitious name," donating "anonymously," or using a pass-through entity, such as "an agent, relative, or other person." *Id.* Neither the PDC nor the court below suggests that Food Democracy's omissions fell within the ambit of this clause.

The second clause, framed in the alternative, bars making contributions or incurring expenditures "in any other manner so as to effect concealment." *Id.*[5] The court below held that Food Democracy's inaction was covered by this clause. Appx. at 7-8. But as the dissenting judge recognized, the second clause "bars contributions and expenditures that are made or incurred in a specific manner: a manner that conceals the identity of their source or effects concealment in other ways." *Id.* at 13 (Bjorgen, J., dissenting). To do something in a particular "manner" means to engage in a certain "mode" or "method." *Id.* (quoting WEBSTER'S THIRD NEW

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[5] Although application of the last antecedent rule would require reading the terminal clause to modify the "manner" of using the specific prohibited devices, for reasons discussed *infra*, it is clear that the drafters intended the terminal clause to expand through a catch-all clause the *categories* of prohibited devices, not the prohibited *manners* of using the devices already enumerated in the first clause.

INTERNATIONAL DICTIONARY 1376 (2002)). To engage in a "mode" or "method" of concealment requires a plan of action to effect that end – in other words, an *intent* to conceal. Thus, even if a purposive connotation did not inhere in the term "conceal" – which it does – its modification through the word "manner" demands a finding of intent.

Furthermore, the terminal clause's prohibition must be read in the context of the specific devices prohibited in the preceding clause. Applying the canon of *ejusdem generis*,[6] the "other manners of concealment" implied in the catchall must be similar in scope to the specific devices contained in the first clause. Each of those devices entails a deliberate effort to mask the source or recipient of campaign contributions by identifying someone other than the true source or recipient. The catchall clause merely extends the prohibition to all conceivable permutations of such disguises.

The Act's legislative history confirms this. The original version of the predecessor to RCW 42.17A.435 contained only the first clause. *See* Laws of 1973, Ch. 1, §12 (Initiative Measure No. 276). When the Legislature amended the FCPA in 1975, the House Report explained why that body felt it necessary to add the second clause:

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[6] *Ejusdem generis* commands that "general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest similar items to those designated by the specific terms." *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 882, 154 P.3d 891 (2007).

> [The] [p]resent law's prohibition against concealing *the identity of the source of a contribution* seems to be limited to concealment only by way of making a contribution or incurring an expenditure, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative or other person. By implication, concealment effected in any other manner is not prohibited – a situation which runs counter to the law's intention to require full disclosure of political campaign contributions and to avoid secrecy. Solution: The bill specifies that contributions may not be made and expenditures may not be incurred in any manner so as to effect *concealment of the identity of the source of the contribution.*

HOUSE COMM. ON CONSTITUTION AND ELECTIONS, 44TH LEG., S.H.B. 827 (Wash. March 24, 1975) (emphasis added); Appx. at 37; *see also* HOUSE COMM. ON CONSTITUTION AND ELECTIONS, 44TH LEG., S.H.B. 827 (Wash. March 25, 1975) ("Section 6: Clarifies the law's intention to prohibit concealing *the source of any contribution* in required reports.") (emphasis added); Appx. at 47.

The House documents reveal in no uncertain terms that the Legislature viewed the provision in question to create liability specifically for persons who conceal "the identity of the source of [a] contribution,"[7] not for those who merely forget to submit reports in general, or are unaware that

[7] It is true, as discussed in n.2, *supra*, that case law has expanded the prohibition to capture concealment of the recipient of an expenditure, as well as the source of a contribution. That clarification merely creates symmetry between the beginning of the first clause (which clearly contemplates both) and the end of the second clause (which facially discusses only the "source of contributions"). But that obvious clarification is very different from expanding the meaning of "concealment" to encompass acts or omissions that do not actively disguise a person's identity.

such a duty exists. The Legislature believed that by adding the catchall clause, it was closing a loophole that impliedly permitted disguising a contribution's source in a manner that had not been expressly enumerated. The Legislature, however, did not intend to extend the definition to include the inadvertent failure to submit disclosure reports.

The interpretation in the decision below also upsets FCPA's overall structure by creating an unnecessary redundancy. Washington observes "the rule against surplusage, which requires [courts] to avoid interpretations of a statute that would render superfluous a provision of the statute." *Veit, ex rel. Nelson v. Burlington N. Santa Fe Corp.*, 171 Wn.2d 88, 113, 249 P.3d 607 (2011).

The decision in the instant case does precisely that, however, by reading into RCW 42.17A.435 a generic bar on failing to submit reports when such a prohibition already exists in two other provisions of the FCPA – RCW 42.17A.245 (requiring candidates and committees to file electronic reports for contributions and expenditures) and RCW 42.17A.305 (requiring same for payments related to "electioneering communications"). Both of those provisions expressly make it a "violation of this chapter" for a candidate or committee to fail "to comply with this section." RCW 42.17A.245(5); RCW 42.17A.305(2). Those statements would be utterly superfluous if RCW 42.17A.435 already proscribed failing to submit

required reports. There are independent indicators in the statute's design which suggest that the controlling prohibitions reside in RCW 42.17A.245 and RCW 42.17A.305.

Both of those provisions describe the reporting requirements for activities regulated in the subchapter to which the provision is attached – fundraising in the case of RCW.17A.245, *see* RCW 42.17A.200, et. seq., and political advertising and electioneering communications in the case of RCW 42.17A.305, *see* RCW 42.17A.300, et seq. In contrast, RCW 42.17A.435 is located in a subchapter on "campaign contribution limits and other restrictions." *See* RCW 42.17A.400, et seq.

All of the other provisions in that subchapter regulate activities other than the basic reporting requirements, which may constitute additional bases for FCPA liability. It would be odd indeed if the law was construed to contain two prohibitions on failing to submit reports, each organically connected to the subchapter describing the relevant activity to be reported, *plus* a separate provision in an unrelated subchapter that circles back and reaffirms *sub silentio* the same prohibitions set forth in the first two provisions.[8]

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[8] The Court of Appeals below reasoned that the statute's structure and underlying policies support the court's expansive construction of the term "concealment." With respect, the court's rationale is circular. The decision states that RCW 42.17A.435 "contains no exception for unintentional conduct…." Appx. at 7. But this position assumes that the term "concealment" does not, by its very definition, exclude unintentional conduct, which is the

Finally, the canon of constitutional avoidance counsels in favor of rejecting the interpretation offered in the decision below. This canon requires that an ambiguity in a statute be resolved "so as to avoid constitutional problems, if possible." *See,* e.g., *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). To the extent the language in RCW 42.17A.435 is ambiguous, the construction supplied in the decision below raises First Amendment problems because it impermissibly deters free speech and assembly. *See infra*, Section D. This Court can avoid reaching these problems by declining to treat inadvertent failure to submit a report as a form of "concealment" under RCW 42.17A.435.

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very proposition Food Democracy disputes and counters with dictionary definitions. Next, the court notes that one of the "primary policies" of the FCPA is to ensure that all "contributions and expenditures [are] fully disclosed to the public and that secrecy is avoided." *Id.* (quoting RCW 42.17A.001(1)). Food Democracy does not challenge the importance of these policies. But they do not decide the issue here. First, Food Democracy has already admitted it did not initially disclose its contribution to the Yes on I-522 Committee. That failure goes to a reporting, not concealment, violation. *See* RCW 42.17A.245. Second, whether Food Democracy engaged in "secrecy" depends on whether it committed a "concealment" violation – again, the very conclusion needing to be proved. Finally, the decision observes that the FCPA carves out an enforcement provision which permits treble damages to punish intentional violations, suggesting by implication that unintentional conduct may also violate the act. *Id.* (citing former RCW 42.17A.765(5)). Unintentional conduct may indeed violate the Act but, as is the case here, such a violation relates to reporting requirements under RCW 42.17A.245, not to concealment under RCW 42.17A.435. If, as Food Democracy argues, "concealment" has an intentional component, the existence of a separate damages provision pertaining to intentional violations establishes at most that this is the appropriate damages remedy to apply in *genuine* instances of concealment.

For the foregoing reasons, this Court should decide the conflict between *Permanent Offense* and the decision below, and resolve that conflict in favor of the former.

C. The Decision Involves an Issue of Substantial Public Interest.

This Court should also accept review pursuant to RAP 13.4(b)(4), because the decision implicates an issue of substantial public interest, which arises when application of the holding has the potential to affect the outcome of many proceedings of the same type. *See*, e.g., *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (noting a case to be "a prime example of an issue of substantial public interest" where a court of appeals holding, "while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County...where a DOSA sentence was or is at issue"). The public interest is also triggered when a decision will have significant real-world ramifications. *See Matter of Arnold*, 189 Wn.2d 1023, 1092, 408 P.3d 1091 (2017) (accepting review under RAP 13.4(b)(4) because holdings "affect public safety by removing an entire class of sex offenders from the registration requirements").

Here, allowing the decision below to become binding precedent would affect dozens, if not hundreds, of pending and future campaign finance proceedings before the PDC and in Superior Courts. Most FCPA enforcement actions involve a candidate or committee's alleged failure to

submit or accurately complete disclosure reports.[9] Following the holding below, any candidate or committee that merely failed to timely submit a report would be liable not only for failure to report under RCW 42.17A.245 or 42.17A.305, but also for concealment.

The Court of Appeals' logic may extend even further. If a person conceals campaign finance information by not timely submitting a report, there is no reason to think a violation would not lie whenever a timely-filed report accidentally misstates data or inadvertently leaves a field blank. After all, these mistakes "conceal" actual campaign finance information just as much as belatedly filed reports do, as the court below interprets the critical term. In other words, leaving the decision untouched would allow the FCPA's concealment provision to swallow any technical reporting error.

Notably, this rule would apply not only to registered committees, but also to any unsuspecting corporation, labor union, non-profit, or other entity which the PDC deemed to be a "political committee." Such an entity's initial failure to file a statement of organization – even if born out of ignorance of the law or a good faith belief in its inapplicability – would constitute concealment and potentially subject the entity to damages above and beyond what it would owe for the failure to register as a political

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[9] *See generally*, Public Disclosure Commission: Enforcement Cases, *available at* https://www.pdc.wa.gov/browse/cases (last visited Oct. 24, 2018) (cataloguing allegations of pending actions and outcomes of closed cases).

committee. A broad array of organizations beyond registered committees therefore have a substantial interest in the outcome of this case.

Liability for concealment also has practical consequences. The prospect of facing compounding penalties for unintentional FCPA violations will likely deter citizens from forming political committees or making contributions thereto. *See infra*, Section D. This would constitute a major shift in social and political activity statewide. All Washington citizens have an interest in whether this change comes to pass.

Accordingly, this Court should accept review pursuant to RAP 13.4(b)(4) and take the opportunity to address this issue of substantial public importance.

D. The Decision Involves a Significant Question of Law under the United States and Washington Constitutions.

The Court of Appeals' interpretation of RCW 42.17A.435 raises a significant question of law under both the federal and Washington Constitutions. If the failure to submit a report constitutes a standalone concealment violation, the PDC and Superior Courts will be permitted to impose additional penalties on top of those connected with the reporting error. *See* 42.17A.750(1)(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.*") (emphasis added); 42.17A.755(3)(b)

("The commission may assess a penalty in an amount not to exceed ten thousand dollars *per violation*.") (emphasis added).

As this case amply demonstrates, PDC commissioners and judges may rely on a committee's supposed concealment to assess damages well in excess of what they might otherwise impose. Many committees will, in turn, curtail or altogether cease fundraising activities to avoid plunging their organizations into bankruptcy should they accidentally file reports untimely or fill out fields incorrectly.

The free speech and assembly protections enshrined in the First and Fourteenth Amendments to the U.S. Constitution and in Article 5 of the Washington Constitution encompass campaign fundraising activities. *See Austin v. MI Chamber of Commerce*, 494 U.S. 652, 657, 110 S.Ct. 1391 (1990), *overruled on other grounds*, 558 U.S. 310, 130 S.Ct. 876 (2010) ("independent campaign expenditures constitute political expression at the core of our electoral process and of the First Amendment freedoms") (quotation marks omitted); *Collier v. Tacoma*, 121 Wn.2d 737, 746, 854 P.2d 1046 (1993) ("The constitutional protection afforded political speech has its fullest and most urgent application precisely to the conduct of campaigns for political office.") (quotation marks omitted).[10]

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[10] Food Democracy recognizes that, unlike in other contexts, the protections offered by Article 5 with respect to campaign disclosure requirements are co-extensive with, not

Statutory regimes that impose penalties sufficient to chill free speech and assembly activities are generally suspect. *See, e.g.*, *Green Party of CT v. Garfield*, 616 F.3d 213, 245 (2d Cir. 2010) (affirming district court's invalidation of state statute that penalized "exercise of the First Amendment right to use personal funds for campaign speech"); *Pearce v. E.F. Hutton Grp., Inc.*, 664 F. Supp. 1490, 1518-19 (D.D.C. 1987) (in libel case, denying punitive damages where plaintiff failed to "overcome very substantial hurdles" to prove they were appropriate, since they "can have a tremendous chilling effect on speech").

They are invalid *per se* when they include a strict liability component that chills protected speech. *See Video Software Dealers Ass'n v. Webster*, 968 F.2d 684, 690-91 (8th Cir. 1992) ("Because the statute's strict liability feature would make video dealers more reluctant to exercise their freedom of speech and ultimately restrict the public's access to constitutionally protected videos, the statute violates the First Amendment."); *Am.-Arab Anti-Discrimination Comm. v. Dearborn*, 418 F.3d 600, 611 (6th Cir. 2005) (finding unconstitutional an ordinance that held marchers strictly liable for marching without permit, despite their ignorance that they lacked permit). Rather, "any statute that chills the

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greater than, those offered by the federal Constitution. *Voters Educ. Comm. v. WA State Pub. Disclosure Com'n*, 161 Wn.2d 470, 497, 166 P.3d 1174 (2007).

exercise of First Amendment rights must contain a knowledge element." *Video Software*, *supra*, 968 F.2d at 690.

In the instant case, the decision below expressly held that a political committee may incur liability for concealment – and thus become subject to duplicative civil penalties – without engaging in "intentional or knowing" conduct. Appx. at 8. This establishes a strict liability standard for proving concealment under RCW 42.17A.435. The decision's erroneous interpretation of the statute will inevitably chill protected campaign activity, raising important constitutional questions necessitating this Court's intervention.

VI. CONCLUSION

This Court should accept review and address whether RCW 42.17A.435's prohibition against "concealment" requires a specific intent to conceal the source of contributions or the recipient of expenditures.

Respectfully submitted this 1st day of November, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorneys of record by the method noted:

Linda A. Dalton, WSBA # 15467 S. Todd Sipe, WSBA # 23203 Lisa Boggess Office of the Attorney General lindad@atg.wa.gov todds4@atg.wa.gov lisab5@atg.wa.gov *[counsel for Respondent State Public Disclosure Commission*	☐ Messenger ☐ Fax ☒ email ☐ Other

DATED this 1st day of November, 2018.

Kenneth S. Kagan
Kenneth S. Kagan

FILED
Court of Appeals
Division II
State of Washington
11/1/2018 3:11 PM

NO. ______

Court of Appeals No. 49932-1-II

SUPREME COURT OF THE STATE OF WASHINGTON

FOOD DEMOCRACY ACTION! and FOOD DEMOCRACY ACTION! YES ON I-522 COMMITTEE TO LABEL GMOs IN WASHINGTON

Petitioner,

v.

STATE OF WASHINGTON, ex rel., WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION,

Respondent.

APPENDIX

Filed
Washington State
Court of Appeals
Division Two

October 2, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, ex rel., WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, Respondent, v. FOOD DEMOCRACY ACTION! and FOOD DEMOCRACY ACTION! YES ON I-522 COMMITTEED TO LABEL GMOs IN WASHINGTON,, Appellant.	No. 49932-1-II PUBLISHED OPINION

MELNICK, J. — Food Democracy Action! (Food Democracy) appeals from a judgment imposing civil penalties against it for violations of state campaign finance disclosure laws.[1] Food Democracy solicited and received contributions to support Initiative 522 (I-522). In turn, it contributed the money in its own name to the Yes on I-522 political committee. After the general election and vote on I-522, and after the Public Disclosure Commission (PDC) began an investigation, Food Democracy registered as a political committee and filed reports disclosing the contributions it received from over seven thousand contributors.

[1] Ch. 42.17A RCW.

Food Democracy argues that the trial court erred in concluding it concealed the source of its campaign contributions. It contends that only intentional conduct amounts to concealment. Food Democracy also argues, for the first time on appeal, that the trial court erred by imposing statutorily authorized civil penalties for the state campaign finance disclosure law violations.

We affirm.[2]

FACTS

I-522 appeared on the state ballot in November 2013, in the general election. It concerned the labeling of genetically engineered foods.

In early July 2013, Food Democracy sent e-mails to its members soliciting contributions in support of the I-522 campaign. Food Democracy raised $295,661.58.

In the three months before the election, Food Democracy made five payments, for a total of $200,000, directly to the Yes on I-522 political committee. Food Democracy made those contributions in its own name. It did not disclose that the money it contributed to the I-522 campaign came from over seven thousand individuals, most of whom lived outside the state. The Yes on I-522 political committee filed a report with the PDC stating that the $200,000 in contributions came directly from Food Democracy.

Food Democracy had some familiarity with the state campaign finance disclosure reporting requirements. An e-mail Food Democracy sent to its members referenced the "public disclosure records filed in Washington State" by the No on 522 political committee. Clerk's Papers (CP) at 130. As of two weeks before the election, Food Democracy's website stated that:

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[2] Contrary to the dissent's proposed resolution, Food Democracy never raised in its brief or at oral argument that it had not committed concealment of names. We decide cases based on the issues set forth by the parties. RAP 12.1.

> Washington State law requires [that Food Democracy] collect and report the name, mailing address, and the contribution amount for each individual whose contributions exceed $25 and the employer and occupation for each individual whose contributions exceed $100 in an election cycle. [The] contribution will be used in connection with Washington State elections and is subject to the limits and prohibitions of the Washington State Public Disclosure Commission.

CP at 135-36. However, before the election, Food Democracy did not report the names of any individuals who contributed funds that Food Democracy then contributed in its own name.

Eight days before the election, the Attorney General's Office received a citizen action letter[3] alleging that Food Democracy violated state campaign finance disclosure laws. The Attorney General's Office forwarded the letter to the PDC. The PDC opened an investigation within eight days of the election.

After the PDC began investigating Food Democracy, and after the election, Food Democracy registered as a political committee[4] (C-1pc Form), identified its treasurer and depository accounts, and filed the required reports. Former RCW 42.17A.205(1), (2)(d) (2012).[5]

Food Democracy filed twelve contribution reports (C-3 Forms), covering the period between July 31 through October 31. The reports detailed the weekly contributions Food Democracy deposited into their depository account for the three months prior to the election. Former RCW 42.17A.235(3). Those reports were the first filings disclosing the individuals who

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[3] A citizen's action letter is a letter notifying the Attorney General's Office that an individual or entity has "reason to believe" a violation of the state campaign finance disclosure laws has occurred. WAC 390-37-041; *see* Former RCW 42.17A.765(4) (2012).

[4] A "political committee" is an entity with the "the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." Former RCW 42.17A.005(37).

[5] The legislature amended portions of chapter 42.17A RCW in 2018. LAWS OF 2018, ch. 304 § 7. We cite to the sections in effect at the time events occurred in this case.

had contributed to Food Democracy in relation to the I-522 campaign. Food Democracy filed all of the C-3 Forms seventeen days after the election. They were between 18 and 109 days late.

Food Democracy also filed five summary reports (C-4 Forms), summarizing its financial activities and itemizing its expenditures from July until after the election. Former RCW 42.17A.235(2). Food Democracy filed all of the C-4 Forms on January 15, 2014, well after the election.

The State filed a complaint in Thurston County Superior Court seeking statutorily authorized civil penalties, costs, and fees under former RCW 42.17A.750(1)(c)-(d), (f). The complaint alleged that Food Democracy violated state campaign finance disclosure laws because it failed to timely register as a political committee, it failed to timely identify a treasurer or a depository account for collected funds, it failed to timely file required reports, and it concealed the identity of the individuals from whom it received its $200,000 in contributions to the Yes on I-522 political committee. The complaint also alleged Food Democracy acted either intentionally or negligently.

Food Democracy filed an answer admitting that it failed to comply with the registration and reporting requirements; however, it denied that its actions amounted to concealment of the source of its contributions.

The State filed a motion for partial summary judgment. Food Democracy opposed the State's motion and argued that its actions did not amount to concealment under former RCW 42.17A.435.

The trial court granted partial summary judgment in favor of the State. The only contested issue remaining for trial involved the amount of penalties, costs, and fees.

Food Democracy did not appear for trial. The State called witnesses and the court admitted evidence in support of the State's requests for civil penalties, costs, and fees authorized under former RCW 42.17A.750 and .765.

The State abandoned any argument that Food Democracy intentionally concealed the source of its contributions and did not seek treble damages for intentional violations of the state campaign finance disclosure laws. Former RCW 42.17A.765(5).

The trial court entered judgment against Food Democracy. It imposed a total penalty on Food Democracy of $319,281.58, including a penalty of $295,661.58 equaling the amount Food Democracy raised; a penalty of $18,000 for the 18 late reports ($1,000 per report for 18 reports);[6] and a $5,620 penalty for the cumulative number of days the reports were late ($5 per day for 1,124 days).[7] In addition, the court awarded the State $2,131.32 in investigation costs, $90,590.20 in attorney fees, and $325 in trial costs.

Food Democracy appeals.

ANALYSIS

I. CONCEALMENT

Food Democracy argues that the court erred in granting summary judgment and by concluding that it concealed the source of its campaign contributions because former RCW 42.17A.435 only prohibits intentional or knowing conduct. We disagree.

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[6] The eighteen late "reports" include its registration C-1pc Form, twelve C-3 Form reports, and five C-4 Form reports.

[7] The court based the 1,124 total late days on the 120 days the C-1pc Form registration was late, the cumulative 541 days the C-3 Form reports were late, and the cumulative 491 days the C-4 Form reports were late.

We review orders granting summary judgment de novo. *Utter ex rel. State v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953 (2015). A court properly grants summary judgment if, viewing "all the evidence in the light most favorable to the nonmoving party, . . . 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" *Utter*, 182 Wn.2d at 406 (second omission in original) (quoting Civil Rules (CR) 56(c)).

We review questions of statutory interpretation de novo. *Utter*, 182 Wn.2d at 406. In interpreting statutes, our goal "is to ascertain and carry out the legislature's intent." *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). We begin our analysis with the statute's plain meaning. *Gunn v. Riely*, 185 Wn. App. 517, 524, 344 P.3d 1225 (2015). "All words must be read in the context of the statute in which they appear, not in isolation or subject to all possible meanings found in a dictionary." *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008). A statute's "plain meaning is derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Jametsky*, 179 Wn.2d at 762 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). Only if the statute is ambiguous do we look to interpretive aids, such as canons of construction and case law. *Gunn*, 185 Wn. App. at 524.

State campaign finance disclosure provisions are to be,

> liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, . . . 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.

Former RCW 42.17A.001.

The statute prohibiting concealment of campaign contributions provides:

> 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.*

Former RCW 42.17A.435 (emphasis added).

This language does not require intentional or knowing conduct. The plain meaning contains no exception for unintentional conduct that results in the concealment of the source of campaign contributions.

Food Democracy relies on a Black's Law Dictionary definition of concealment to argue that the concealment statute only applies to "'conduct that is intentional or known to be likely to keep another from learning facts.'" Op. Br. of Appellant at 19. We reject this contention.

Food Democracy attempts to read the word "conceal" in isolation from the rest of the statute and not in the context of chapter 42.17A RCW. In addition, the public disclosure statute at issue applies to conduct that conceals the identity of the source of the contribution. RCW 42.17A.435. The plain meaning is evident; it prohibits any conduct that conceals the source of campaign contributions. In arriving at this conclusion, we note that one of the primary policies of the disclosure laws is "[t]hat political campaign and lobbying contribution and expenditures be fully disclosed to the public and that secrecy is to be avoided." RCW 42.17A.001(1).

In addition, there is a separate statute that permits treble punitive damages for intentional violations of the campaign finance disclosure laws. Former RCW 42.17A.765(5). The increased penalty for intentional violations suggests that the legislature contemplated unintentional conduct underlying some violations of the campaign finance disclosure laws. *See Dailey v. N. Coast Life Ins. Co.*, 129 Wn.2d 572, 577, 919 P.2d 589 (1996) (punitive damages is a form of "exceptional relief").

Based on the preceding, we conclude that the plain meaning of former RCW 42.17A.435 is unambiguous. It does not require intentional or knowing concealment.

Food Democracy does not dispute the facts; it only disputes the applicability of the concealment statute to its conduct. Despite soliciting and receiving contributions to support I-522, Food Democracy contributed to the Yes on I-522 political committee in its own name. Food Democracy did not report the source of its contributions. No genuine issue of material fact exists that Food Democracy's failures to timely report campaign finance activities concealed the identity of the sources of its campaign contributions.

Because the statute does not require the concealment to be intentional or knowing, the trial court did not err in granting partial summary judgment. Food Democracy's conduct resulted in the concealment of the source of it campaign contributions.

II. CIVIL PENALTIES

Food Democracy argues that the penalties amount to a manifest error of constitutional magnitude because they are a "grossly excessive" fine imposed in violation of the Eighth Amendment to the United States Constitution. Br. of Appellant at 33. Food Democracy also argues the trial court abused its discretion by imposing civil penalties.[8] Because Food Democracy did not appear at the trial on the question of penalties, all of these issues are raised for the first time on appeal.

The State argues that Food Democracy waived any objection to the penalties by failing to appear at trial and raise the issue below. The State further argues that any alleged error is not "manifest" because Food Democracy's argument "has no legal or factual basis." Br. of Resp't at

[8] Food Democracy's brief alternates between the terms "abuse of discretion" and "arbitrary and capricious" when making its nonconstitutional argument on the penalties imposed. We construe the brief as actually arguing abuse of discretion.

37. We agree with the State. In addition, the record is insufficient for us to address Food Democracy's constitutional challenge.

A party generally waives the right to appeal an error absent an objection at the trial level. RAP 2.5(a); *State v. WWJ Corp.*, 138 Wn.2d 595, 601, 980 P.2d 1257 (1999). But a party may raise an alleged error for the first time on appeal if it constitutes a manifest error affecting a constitutional right. RAP 2.5(a)(3); *WWJ Corp.*, 138 Wn.2d at 601. An "error is manifest only if it results in a concrete detriment to the claimant's constitutional rights, *and* the claimed error rests upon a plausible argument that is supported by the record." *WWJ Corp.*, 138 Wn.2d at 603. "If the record from the trial court is insufficient to determine the merits of the constitutional claim, then the claimed error is not manifest and review is not warranted." *WWJ Corp.*, 138 Wn.2d at 602.

A. Eighth Amendment Prohibition on Excessive Fines[9]

An Excessive Fines Clause claim "involves a genuine constitutional issue." *WWJ Corp.*, 138 Wn.2d at 603. However, the record must be sufficient to evaluate the merits of such a claim under RAP 2.5(a)(3). *WWJ Corp.*, 138 Wn.2d at 603-04. A record is insufficient for review if it lacks argument and analysis at trial on the disputed issue. *WWJ Corp.*, 138 Wn.2d at 598, 604.

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[9] Food Democracy also briefly states that the penalties imposed against it are excessive because they target constitutionally protect speech, and are not substantially related to an important government interest. We disagree. *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010), "upheld Washington's disclosure laws on the ground that they satisfy the First Amendment's exacting scrutiny test, which examines whether the law's requirements 'are substantially related to a sufficiently important governmental interest.'" *Utter*, 182 Wn.2d at 434 (quoting *Brumsickle*, 624 F.3d at 1005). "Washington's disclosure laws are constitutional *on their face* because they serve an important government interest and use a narrowly tailored means that does not force overburdensome or duplicative reporting." *Utter*, 182 Wn.2d at 434.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend VIII; *WWJ Corp.*, 138 Wn.2d at 603. The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *United States v. Bajakajian*, 524 U.S. 321, 328, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998) (quoting *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993)). The Due Process Clause of the Fourteenth Amendment "makes the Eighth Amendment's prohibition against excessive fines . . . applicable to the States." *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433-34, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001).

"The first step in an excessive fines claim is to demonstrate the state action is 'punishment.'" *State v. Clark*, 124 Wn.2d 90, 102, 875 P.2d 613 (1994), *overruled on other grounds by State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997). "The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin*, 509 U.S. at 610. "[C]ivil proceedings may advance punitive as well as remedial goals." *Austin*, 509 U.S. at 610. "'A civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment.'" *Kokesh v. SEC*, 137 S. Ct. 1635, 1645, 198 L. Ed. 2d 86 (2017) (quoting *Austin*, 509 U.S. at 621); *State ex rel. Eikenberry v. Frodert*, 84 Wn. App. 20, 30, 924 P.2d 933 (1996).

Food Democracy did not analyze or show that the civil penalties imposed by the trial court would be punishments under the Excessive Fines Clause at trial. Because it did not appear at trial, it also failed to address in the trial court that the civil penalties constitute punishment. The record is insufficient to determine whether the Excessive Fines Clause applies. We therefore cannot and do not address the merits of the alleged Eighth Amendment violation.

B. Abuse of Discretion

We also decline to consider whether the trial court abused its discretion when imposing penalties against Food Democracy. Food Democracy conceded at oral argument that it waived its arguments related to the penalties when it failed to appear for trial and offered no good reason on the record. We agree that any argument on this issue is not preserved.

III. ATTORNEY FEES

Food Democracy requests attorney fees and costs at trial and on appeal in the event it prevails. Because it did not prevail, we award Food Democracy no fees or costs.

The State requests attorney fees and costs on appeal in the event that it prevails. The State also requests that we affirm the award of attorney fees and costs at trial.

"In Washington, a party may recover attorney fees only when they are authorized by a private agreement, statute, or recognized ground of equity." *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 294, 150 P.3d 568 (2006). Former RCW 42.17A.765(5) provides, in relevant part, that in any civil action brought by the State for violations of the state campaign finance disclosure laws:

> the court may award to the state all 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 to be paid by the state of Washington.

In *Permanent Offense*, the court held that "an award of fees to a prevailing party at trial [under the identically worded former RCW 42.17.400(5)] authorizes fees on appeal . . . subject to . . . compliance with RAP 18.1(d)." 136 Wn. App. at 295.

We affirm the award of attorney fees and costs to the State at trial and award fees and costs on appeal to the State.

We affirm.

Melnick, J.

Melnick, J.

I concur:

Lee, A.C.J.

Lee, A.C.J.

BJORGEN, J. (dissenting) — I agree with the majority that Food Democracy Action! (Food Democracy) committed multiple violations of our campaign finance laws in its support of Initiative 522. However, I disagree that its actions constituted concealment under the governing statute.

Food Democracy did not file its political committee registration, its C-3 contribution reports, or its C-4 financial summary reports within the time prescribed by chapter 42.17A RCW. These delinquent reports were months late and were filed after the election occurred, thus depriving citizens of potentially enlightening information in deciding on their vote. In doing so, Food Democracy violated the law, including former RCW 42.17A.235 (2012) and former RCW 42.17A.240 (2012).

Food Democracy's actions, however, did not constitute concealment under RCW 42.17A.435, which states:

> 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.

By its terms, this provision bars contributions and expenditures that are made or incurred in a specific manner: a manner that conceals the identity of their source or effects concealment in other ways. "Manner" is defined in relevant aspect as "the mode or method in which something is done or happens." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1376 (2002). The term is not otherwise defined in chapter 42.17A RCW. No argument is raised that statutory context compels some other meaning of "manner." Thus, the plain meaning of "manner" in this statute refers to the way in which the contribution or expenditure itself is carried out.

The specific examples in the statute confirm legislative intent to use the term in this way. Contributions made or expenditures incurred in fictitious names, anonymously or through

conduits each depend on the nature of the transaction itself, not on the failure to file a report after they have occurred. Under the canon of statutory construction known as ejusdem generis,

> general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest similar items to those designated by the specific terms.

Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 882, 154 P.3d 891 (2007). Following that canon, the general term "in any other manner so as to effect concealment" must be read to mean the same sort of thing as do the specific examples; that is, the general term must pertain to the nature or circumstances of the contribution or expenditure itself.

Thus, both the plain language of the statute and the applicable canon of construction point to the same end. RCW 42.17A.435 is aimed at concealment through the circumstances of the transaction, including but not limited to evidence of intent to conceal through the transaction. It is not aimed at the failure to file subsequent reports disclosing the transaction. Those transgressions are covered by other elements of chapter 42.17A RCW.

Our recent decision in *State v. Grocery Manufacturers Association*, No. 49768-9-II, slip op. at *1 (Wash. Ct. App. Sept. 5, 2018) http://www.courts.wa.gov/opinions/pdf, is not to the contrary. In that decision, we affirmed the summary judgment by the trial court that upheld penalties imposed on the Association for various violations of chapter 42.17A RCW, including the failure to file required political committee reports. Among the provisions the trial court held violated was RCW 42.17A.435's prohibition of concealment.

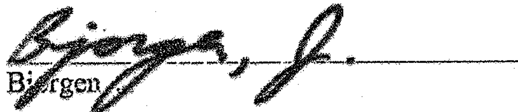
The Association challenged this only on the ground that RCW 42.17A.435 was unconstitutionally vague. *Grocery Mfr.*, slip op. at *13. Specifically, the Association asserted that "concealment" under RCW 42.17A.435 requires an independent act or omission besides the failure to comply with other FCPA (Fair Campaign Practices Act) regulations and that apart from its

failing to register as a political committee, there was no evidence of that. *Grocery Mfr.*, slip op. at *15. We held that the statute was not vague, because even under the Association's independent act standard, there was undisputed evidence at summary judgment that it deliberately concealed the identity of its members who contributed funds. *Grocery Mfr.*, slip op. at *16.

Thus, our decision in *Grocery Manufacturers Association* did not decide the issue raised by this dissent: whether concealment under RCW 42.17A.435 requires some act apart from failure to comply with other provisions of chapter 42.17A RCW. The resolution of that issue is not affected by *Grocery Manufacturers Association.*

For these reasons, the superior court erred in concluding that Food Democracy concealed the true sources of the contributions made and expenditures received in violation of RCW 42.17A.435. That ruling should be reversed.

The court imposed a civil penalty of $295,661.58 for "concealing both the amount accumulated in and source of contributions received." Clerk's Papers at 245. Because the conclusion of concealment under RCW 42.17A.435 was in error, this civil penalty should be reversed. The figure of $295,661.58 imposed by the court was the amount of money Food Democracy raised in cash and in-kind contributions. Under former RCW 42.17A.750(1)(e) (2012), "[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." This matter should be remanded to superior court for a new decision as to what amount of civil penalties should be imposed absent concealment under RCW 42.17A.435.


Bjorgen, J.

CONSTITUTION OF THE STATE OF WASHINGTON

This Constitution was framed by a convention of seventy-five delegates, chosen by the people of the Territory of Washington at an election held May 14, 1889, under section 3 of the Enabling Act. The convention met at Olympia on the fourth day of July, 1889, and adjourned on the twenty-second day of August, 1889. The Constitution was ratified by the people at an election held on October 1, 1889, and on November 11, 1889, in accordance with section 8 of the Enabling Act, the president of the United States proclaimed the admission of the State of Washington into the Union.

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(A) Constitution of the State of Washington
(B) Constitutional Amendments (in order of adoption)
(C) Index to State Constitution.

In part (A), for convenience of the reader, the latest constitutional amendments have been integrated with the currently effective original sections of the Constitution with the result that the Constitution is herein presented in its currently amended form.

All current sections, whether original sections or constitutional amendments, are carried in Article and section order and are printed in regular type.

Following each section which has been amended, the original section and intervening amendments (if any) are printed in italics.

Appended to each amendatory section is a history note stating the amendment number and date of its approval as well as the citation to the session law wherein may be found the legislative measure proposing the amendment; e.g. "**[AMENDMENT 27**, 1951 House Joint Resolution No. 8, p 961. Approved November 4, 1952.]"

In part (B), the constitutional amendments are also printed separately, in order of their adoption.

(A) Constitution of the State of Washington

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4 Jurisdiction.
5 Superior court — Election of judges, terms of, etc.
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10 Justices of the peace.
11 Courts of record.
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8 Change of courts — Transfer of causes.
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1 Special revenue financing.

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties, do ordain this constitution.

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 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

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

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

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 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

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 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [**AMENDMENT 88**, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment:* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 13 HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

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

SECTION 15 CONVICTIONS, EFFECT OF. No conviction shall work corruption of blood, nor forfeiture of estate.

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [**AMENDMENT 9**, 1919 p 385 Section 1. Approved November, 1920.]

Original text — Art. 1 Section 16 EMINENT DOMAIN — *Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.*

SECTION 17 IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt, except in cases of absconding debtors.

SECTION 18 MILITARY POWER, LIMITATION OF. The military shall be in strict subordination to the civil power.

SECTION 19 FREEDOM OF ELECTIONS. All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SECTION 20 BAIL, WHEN AUTHORIZED. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon

a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature. [**AMENDMENT 104**, 2010 Engrossed Substitute House Joint Resolution No. 4220, p 3129. Approved November 2, 2010.]

Original text — Art. 1 Section 20 BAIL, WHEN AUTHORIZED — *All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.*

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided,* The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [**AMENDMENT 10**, 1921 p 79 Section 1. Approved November, 1922.]

Original text — Art. 1 Section 22 RIGHTS OF ACCUSED PERSONS — *In criminal prosecution, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.*

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

SECTION 24 RIGHT TO BEAR ARMS. The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

SECTION 25 PROSECUTION BY INFORMATION. Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

SECTION 26 GRAND JURY. No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

SECTION 27 TREASON, DEFINED, ETC. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SECTION 28 HEREDITARY PRIVILEGES ABOLISHED. No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

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

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SECTION 31 STANDING ARMY. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

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

SECTION 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified

electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [**AMENDMENT 8**, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [**AMENDMENT 8**, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. [**AMENDMENT 84**, 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people re-

From: ken@kenkaganlaw.com
Subject: FW: Food Democracy Action!: Draft Petition for Discretionary Review
Date: October 29, 2018 at 11:01 AM
To: james@meryhewlaw.com

2018 10 27_Pet for Review_dfm Edits.docx

42.17A.245. Electronic filing--When required, WA ST 42.17A.245

West's Revised Code of Washington Annotated
Title 42. Public Officers and Agencies (Refs & Annos)
Chapter 42.17A. Campaign Disclosure and Contribution (Refs & Annos)
Campaign Finance Reporting

West's RCWA 42.17A.245

42.17A.245. Electronic filing--When required

Effective: January 1, 2012
Currentness

(1) Each candidate or political committee that expended five thousand dollars or more in the preceding year or expects to expend five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055. The commission may make exceptions on a case-by-case basis for candidates whose authorized committees lack the technological ability to file reports using the electronic alternative provided by the commission.

(2) Failure by a candidate or political committee to comply with this section is a violation of this chapter.

Credits
[2011 c 145 § 4, eff. Jan. 1, 2012; 2010 c 204 § 410, eff. Jan. 1, 2012; 2000 c 237 § 4; 1999 c 401 § 12. Formerly RCW 42.17.3691.]

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.]

West's Revised Code of Washington Annotated
Title 42. Public Officers and Agencies (Refs & Annos)
Chapter 42.17A. Campaign Disclosure and Contribution (Refs & Annos)
Lobbying Disclosure and Restrictions (Refs & Annos)

West's RCWA 42.17A.655

42.17A.655. Lobbyists' duties, restrictions--Penalties for violations

Effective: January 1, 2012
Currentness

(1) A person required to register as a lobbyist under RCW 42.17A.600 shall substantiate financial reports required to be made under this chapter with accounts, bills, receipts, books, papers, and other necessary documents. All such documents must be obtained and preserved for a period of at least five years from the date of filing the statement containing such items and shall be made available for inspection by the commission at any time. If the terms of the lobbyist's employment contract require that these records be turned over to his or her employer, responsibility for the preservation and inspection of these records under this subsection shall be with such employer.

(2) A person required to register as a lobbyist under RCW 42.17A.600 shall not:

(a) Engage in any lobbying activity before registering as a lobbyist;

(b) Knowingly deceive or attempt to deceive a legislator regarding the facts pertaining to any pending or proposed legislation;

(c) Cause or influence the introduction of a bill or amendment to that bill for the purpose of later being employed to secure its defeat;

(d) Knowingly represent an interest adverse to his or her employer without full disclosure of the adverse interest to the employer and obtaining the employer's written consent;

(e) Exercise any undue influence, extortion, or unlawful retaliation upon any legislator due to the legislator's position or vote on any pending or proposed legislation;

(f) Enter into any agreement, arrangement, or understanding in which any portion of his or her compensation is or will be contingent upon his or her success in influencing legislation.

(3) A violation by a lobbyist of this section shall be cause for revocation of his or her registration, and may subject the lobbyist and the lobbyist's employer, if the employer aids, abets, ratifies, or confirms the violation, to other civil liabilities as provided by this chapter.

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Credits

[2010 c 204 § 812, eff. Jan. 1, 2012; 1987 c 201 § 2; 1982 c 147 § 14; 1973 c 1 § 23 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.230.]

West's RCWA 42.17A.655, WA ST 42.17A.655
Current with all effective legislation from the 2018 Regular Session of the Washington Legislature.

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West's Revised Code of Washington Annotated
Title 42. Public Officers and Agencies (Refs & Annos)
Chapter 42.17A. Campaign Disclosure and Contribution (Refs & Annos)
Personal Financial Affairs Reporting by Candidates and Public Officials

West's RCWA 42.17A.715

42.17A.715. Concealing identity of source of payment prohibited--Exception

Effective: January 1, 2012
Currentness

No payment shall be made to any person required to report under RCW 42.17A.700 and no payment shall be accepted by any such person, 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 payment or in any other manner so as to effect concealment. The commission may issue categorical and specific exemptions to the reporting of the actual source when there is an undisclosed principal for recognized legitimate business purposes.

Credits
[2010 c 204 § 904, eff. Jan. 1, 2012; 1977 ex.s. c 336 § 4. Formerly RCW 42.17.242.]

West's RCWA 42.17A.715, WA ST 42.17A.715
Current with all effective legislation from the 2018 Regular Session of the Washington Legislature.

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HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

BILL NO. SHB 827

Comp. Meas. ______

Status H Rules 2

Date 3-24-75

Staff Contact: Parsons

Committee on Constitution and Elections

Public Disclosure
Brief Title

House Committee on Constitution and Elections
Sponsor

The following is a sectional analysis of problems addressed by Substitute House Bill 827:

Section 1 - Problem No. 1 Present language is unclear regarding the voting constituencies to which a measure must be proposed to be submitted to be considered a "ballot proposition" and the time frame during which a proposal becomes such a "ballot proposition". This causes confusion as to when reporting obligations are incurred by committees supporting or opposing such measures.

Solution The bill clarifies that "ballot proposition" includes measures which are proposed to be submitted to the voters of the state or any municipal corporation, political subdivision or other voting constituency from and after the initial filing date but prior to circulation for signatures on petitions to place such measures on the ballot.

Section 1 - Problem No. 2 The term "compensation" is not presently defined by the act. This results in confusion as to who comes under the provisions of the law and what must be reported as "compensation" by those who must comply.

Solution - The bill defines "compensation" to include payment in any form for real or personal property or services of any kind.

Section 1 - Problem No. 3 The term "continuing political committee" is not presently defined by the act. This results in confusion as to the duty of such a committee to report.

Solution The bill defines "continuing political committee" to be a political committee of continuing existence notestablished in anticipation of any particular election.

Section 1 - Problem No. 4 Present language is unclear as to which incidental expenses paid for by a volunteer campaign worker are not included in the definition of the term "contribution". This causes confusion as to what must be reported by political committees as contributions.

Solution The bill clarifies that the exemption from the definition of "contribution" of incidental expenses paid for by a volunteer campaign worker is limited to those expenses personally incurred by such worker.

Section 2 - Problem No. 5 Present law does not specify the length of time a campaign depository must retain contributions reports. This results in a concern that such a depository might be required to retain such reports forever.

Solution The bill requires that statements of contributions received and deposited must be retained by the campaign depository for no less than three years.

Section 2 - Problem No. 6 Present law requires all political committees to deposit all contributions received in a single account in a campaign depository. This requirement is not necessarily appropriate for a political committee which exists for more than one purpose. For example, co-mingling of funds could cause such a committee to inadvertantly violate federal law, which prohibits corporations from donating to congressional candidates. Because state law contains no such prohibition, the committee could accept corporation contributions for dispersal to non-congressional candidates, but, because of the single account requirement, would not be able to give funds from the same account to congressional candidates.

Solution - The bill allows political committees which exist for more than one purpose to maintain multiple separate bank accounts within the same depository, but requires identification of such purposes for each such account and prohibits expenditure for more than one such purpose from a single account.

Section 2 - Problem No. 7 Present law requires all political committees to report and identify each contributor whose aggregate contribution exceeds $5. The inflexibility of this requirement creates an extreme hardship for those committees which use special event fund raisers, such as rummage and bumper sticker sales--the proper reporting of which is nearly impossible because of the nature of the contributions received.

Solution The bill allows political committees to retain and use accumulated unidentified contributions of up to one percent of total contributions received or three hundred dollars, whichever is more.

Section 3 - Problem No. 8 Continuing political committees are presently required to comply with all of the same reporting requirements as all other political committees. Because such a committee is, by implication, an organization of continuing existence not established in anticipation of any particular election, and because the law does not distinguish between such continuing political committees and those political committees which are organized in anticipation of a particular election, a strict interpretation of the law would require that such a committee must file campaign finance reports for all election campaigns regardless of whether or not it is itself involved in those

campaigns. Additionally, committees with a campaign deficit must only report every six months until the deficit is eliminated, even though such a committee may be continuously active in receiving contributions to erase the deficit; while committees with a surplus must report monthly, even though the committee might be completely inactive in terms of receiving contributions and making expenditures. Thus, some committees are continuously filing reports which are of little or no public value, while other committees are not required to disclose in a timely manner information which could be valuable to the public.

Solution The bill places continuing political committees under the same requirements as other political committees in terms of the obligation to file a statement or organization, the designation of a campaign treasurer and campaign depositories and the method of handling contributions and the reporting thereof.

Requires such committees to file regular reports on the tenth day of each month containing, for the preceding month:

(a) the same information that must be included in the periodic report of contributions presently required of other political committees

(b) identification of payments on committee debts

(c) any other information required by the Commission

Requires such continuing committees to report each contribution to committees having a single election purpose within one day of making such a contribution and include in such report:

(a) the names and addresses of all persons contributing since the last monthly report

(b) the names and addresses of all persons making loans to the committee since the last monthly report.

Places such committees under the same requirements as other political committees in terms of the dissolution of such a committee, the maintenance of books of account, the certification of all reports filed and the availability of such reports for public inspection.

Allows the Commission to prescribe alternative reporting dates for such continuing committees which are inactive holders of surplus campaign funds. Prohibits, however, prescription of such alternative reporting dates for any month in which such committee receives a contribution or makes an expenditure.

NOTE: A proposed House amendment to this section, as recommended by the Coalition for Open Government, would specify that making any contribution during the sixty days immediately preceding an election would trigger the same reporting obligation for a continuing political committee as that which presently applies to all other political committees active in that election campaign. This amendment would replace the requirement that such committees must report within one day of making any contributions.

STAFF RECOMMENDATION: An alternative amendment would be to require such committees to file a report only for each reporting period during which such a contribution is made.

Section 4 - Problem No. 9 Language found elsewhere in the law would be duplicated or made unnecessary by the adoption of Section 3 above.

Solution The bill repeals such duplicitious and unnecessary language from the law.

Section 5 - Problem No. 10 Present law requires political committees to disclose the name and address of each contributor of $5 or more in the aggregate. Since the separate and private list of those contributing less than $5 need not contain the address of each such contributor and should the aggregate received from such a contributor ever exceed $5, the contributor's address would not necessarily be available for the required report.

Solution The bill adds the requirement that addresses must be included in the separate and private list of persons contributing less than $5 to a political campaign.

Section 5 - Problem No. 11 A literal interpretation of present law requires a political committee which receives funds from an out of state and otherwise nonreporting committee to forfeit such funds to the state if the nonreporting committee did not file the report required to avoid such forfeiture prior to the reporting committee's receipt of such funds. This provision presumes that the out of state, nonreporting committee is familiar with this state's disclosure requirements prior to entering the state political scene--a presumption which is not necessarily true or reasonable.

Solution The bill allows three days following receipt of a contribution from a nonreporting committee by a reporting committee for the nonreporting committee or the recipient of such funds to file the report required to allow the reporting committee to retain such contribution.

Section 6 - Problem No. 12 Present law's prohibition against concealing the identity of the source of a contribution seems to be limited to concealment only by way of making a contribution or incurring an expenditure, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative or other person. By implication, concealment effected in any other manner is not prohibited--a situation which runs counter to the law's intention to require full disclosure of political campaign contributions and to avoid secrecy.

Solution The bill specifies that contributions may not be made and expenditures may not be incurred in any manner so as to effect concealment of the identity of the source of the contribution.

Section 7 - Problem No. 13 Present law makes no provision for a visual introduction of registered lobbyists to the public and the legislature. This reduces the visibility of these important characters in the legislative process and, thereby, makes lobbying activity more difficult to monitor.

Solution Requires each lobbyist, at the time of registering as such, to submit to the Commission a recent photograph and certain personal background information; and, further, requires the Commission to annually publish same in booklet form for distribution to legislators and the public.

Section 8 - Problem No. 14 Present law's exemption of legislative employees from lobbyist reporting appears to be limited to those employees who aid in the preparation and enactment of legislation. The implication is that employees such as bill clerks and secretaries are not exempt because they do not necessarily "aid in the preparation or enactment of legislation".

Solution The bill specifies that the exemption from lobbyist reporting applies to persons employed by the legislature to aid in preparing or enacting legislation or performing legislative duties.

Section 8 - Problem No. 15 Present law specifically exempts from lobbyist registration and reporting all persons who limit their lobbying activities to appearance before public sessions of committees of the legislature, or public hearings of state agencies. This allows persons to avoid registration and reporting as a lobbyist even though they might be receiving compensation to attempt to influence the passage or defeat of legislation or the legislative actions of a state agency. Since the specified intent of the law is to show the influence of money on the legislative process, this loophole should be closed.

STAFF RECOMMENDATION: The substitute bill should be amended to repeal RCW 42.17.160 (1) which provides for the above-noted exemption from lobbyist registration and reporting.

Problem No. 16 Present law requires all registered lobbyists to file quarterly and, during legislative sessions, weekly periodic reports of lobbying activities. Thus, the law requires the so-called "casual lobbyist" to file the same number of reports as the fulltime, professional lobbyist, even though the person may actually "lobby" only once or twice during an entire year. Thus, the application of the law is somewhat unreasonable because reports are not necessarily based on actual lobbying activity.

STAFF RECOMMENDATION: The substitute bill should be amended to include a new section amending RCW 42.17.170 to provide that an interim weekly periodic report need not be filed for any week during which the reporting person does not make any reportable expenditures. An alternative

amendment would be to provide that no report need be filed for any reporting period - weekly or quarterly - during which no reportable expenditures are made by the reporting person.

Section 9 - Problem No. 17 Present law requires a yearly report by each employer of a registered lobbyist containing (1) identification of any elected official, candidate or member of his immediate family to whom such employer has paid compensation, the value of such compensation and the consideration exchanged for such compensation; and (2) identification of any business entity which employs any elected official, candidate or member of his immediate family and to which the reporting employer has paid compensation, the value of such compensation and consideration exchanged for such compensation. The discovery work required to compile these lists places an extreme hardship on each lobbyist employer. For example, a large corporation might well be forced to survey every elected official in the state of Washington and numerous in-state and out-of-state commercial entities in what would probably be a futile attempt at minimal compliance. The public value of the information disclosed is not worth the time and expense of compiling it.

Solution The bill changes the due date for lobbyist employers' reports from January 31st to March 31st of each year for the preceding calendar year.

Limits the applicability of such reports to state elected officials, candidates for state office, and members of their immediate families, and specifies that the compensation received by such persons which makes their names reportable must be in excess of $500 paid in the past calendar year by the lobbyist employer for personal employment or professional services.

Allows the reporting of the amount of such compensation to be accomplished in the same manner as is presently allowed for candidates and elected officials to report compensation levels in their statements of financial affairs.

Repeals the requirement that such reports must identify any compensation paid by such an employer to elected officials, candidates and their immediate families.

Requires, instead, that such reports must identify any expenditures (including contributions) made, directly or indirectly, by such employer to elected officials, candidates and their immediate families. Excludes from such reportable expenditures those made in the ordinary course of business if not made to influence, honor or benefit such elected officials, successful candidates or their immediate families as an elected official or candidate.

Requires inclusion in such reports of the total amount spent by such employer for lobbying purposes categorized as:

(a) expenditures made by or for a registered lobbyist

(b) contributions to any candidate for state office or any political committee supporting or opposing a candidate for state office or a statewide ballot proposition
(c) all other expenditures

Requires inclusion in such reports of the name and address of each registered lobbyist employed by such employer.

Section 10 - Problem No. 18 Present law requires legislators and legislative committees to file reports identifying legislative employees who aid in preparing or enacting legislation. This implies that legislative employees who do not necessarily aid in preparing or enacting legislation, such as pages and personal secretaries, are not reportable even though they do perform legislative duties.

Solution The bill specifies the reports required from legislators and legislative committees must include the required information on all persons employed by such legislators or committees who aid in preparing or enacting legislation, or who perform legislative duties for such legislator or committee.

Section 10 - Problem No. 20 Present law requires that state agencies which communicate to a legislator on his request must file a report identifying such legislator and the nature and subject of his request. The effect of this requirement has allegedly been to cut off the informational sources available to legislators, both because agency employees and legislators might fear reprisals and adverse publicity and because agencies are hesitant to communicate because of the time and expense of logging each communication to a legislator.

Solution Limits filing the report required from state agencies which communicate with legislators upon their request to those agencies which do so communicate only on legislation directly affecting such agencies.

Deletes the requirement that reports by lobbying agencies must identify all communications in response to a request from a legislator.

Section 11 - Problem No. 21 Present law requires each elected official to file a financial disclosure statement on or before January 31st of each year, but does not specify the date prior to which such report may not be filed.

Solution The bill specifies that an elected official's financial disclosure statement may not be filed with the Commission until after January 1st of each year for the previous calendar year.

Section 11 - Problem No. 22 Present law does not require persons appointed to fill an elective office vacancy to file the financial affairs statement--an apparent oversight in a law intended to require such disclosure of all persons in elective office.

Solution The bill adds such persons to the list of those persons who must file such a statement.

Section 11 - Problem No. 23 Present law is unclear as to what is being required where the elected official must identify certain financial interests and all transactions for preparation, promotion, or opposition to legislation, rules, rates, or standards.

Solution The bill clarifies apparent legislative intent by specifying that the statement must identify each direct financial interest in excess of $5,000 in a bank or savings account or an insurance policy; each direct financial interest in an item of intangible personal property valued in excess of $500; and the highest value of each such interest during the reporting period.

Modifies the required contents of the statement to require identification of all persons for whom the reporting person has prepared, promoted, or opposed, for current or deferred compensation, any legislation or any rules, rates or standards; and specifies that the compensation which makes such identification necessary does not include the salary paid by the state to a legislator for service in office.

Section 11 - Problem No. 24 Present law requires inclusion in the financial affairs statement of an identification of each business entity of which the reporting person is an officer or part-owner and each other business or governmental entity from which each such entity has received compensation in excess of $500 during the preceding year, together with an identification of the consideration exchanged for such compensation. The hardship of complying with this particular requirement has been demonstrated in numerous instances. The time and expense of compiling the information can be extremely burdensome--even impossible--for persons associated with larger corporations. Additionally, many business entities, by their very nature, require confidentiality of such client lists--particularly in the case of officers of financial institutions and attorney's in large law firms. Even smaller businesses are extremely hesitant to disclose their customer lists because of the competitive disadvantage such public disclosure could cause.

Solution The bill adds a requirement that the statement must identify all transactions occuring during the reporting period between the reporting person's business concern and the governmental entity in which an office is held or being sought.

Changes the reporting threshold from $500 to $2,500 for all reportable transactions occurring during the reporting period between such person's business concern and any other business or governmental entity. Specifies that the compensation which makes a transaction reportable does not include payment for utility services at approved rates or interest paid on loans.

Adds a requirement that the statement must identify each time or demand deposit of either $100,000 or one tenth of one percent of total deposits held by such person's business concern for business and governmental entities, whichever is less.

Section 11 - Problem No. 25 Present law requires inclusion in the financial affairs statement of a "legal description" of various property interests of the reporting person. Legal descriptions are so technical that compliance is, in many cases, very difficult, and the information disclosed is of little value to the layman, who could hardly be expected to understand the import of such a description.

Solution The bill allows description of real property interests in a sufficient manner prescribed by the Commission instead of the presently required legal description.

Section 12 - Problem No. 26 The present date after which each state agency must have currently indexed its public records is inconsistent with the effective date of the act.

Solution The bill changes from June 30, 1972, to January 1, 1973, the date after which all public records issued, adopted, or promulgated must be currently indexed by each state agency.

Sections 13, 14, 15, 16, 17 & 18 - Problem No. 27 Present language in the law is internally inconsistent as it relates to the use of the term "public records".

Solution The bill makes such language consistent throughout the chapter.

Sections 13 & 14 - Problem No. 28 Present law makes no provision for requiring state agencies to honor mail requests for public records, thus hindering public access to such records.

Solution The bill requires agencies to honor such mail requests for public records.

Section 15 - Problem No. 29 Present law is unclear as to the breadth of the exemption from public inspection of the contents of real estate appraisals.

Solution The bill clarifies this exemption by specifically exempting those real estate appraisals made relative to the sale of property prior to the prospective sale being made or abandoned.

Section 19 - Problem No. 30 Present law has been interpreted to require that various state archives, libraries, colleges and universities must make available to the public certain otherwise non-public records conditionally donated to these institutions.

Solution The bill exempts from public inspection and copying any records or documents (other than those presently defined as public records or the public portion of records of a private citizen acting in a public capacity) obtained by a state college, university, library or archive through or concerning any gift, grant, conveyance, bequest or devise, the terms of which restrict or regulate public access to such records or documents.

Section 20 - Problem No. 31 The present rate of expense reimbursement for members of the Public Disclosure Commission, which is $25 per day, has been determined to be inadequate.

Solution The bill authorizes compensation of Commission members at a rate of forty dollars for each day in which four hours or more is spent performing Commission duties.

Section 20 - Problem No. 32 Present law has been interpreted to prohibit the Commission from communicating with the legislature and other state agencies to the same extent that is presently allowable for members of other statutory commissions. This severely restricts the Commission in terms of its ability to offer insight to the legislature as to the administration of the law.

Solution The bill authorizes the Commission or its staff to respond to communications from the legislature, or from any state agency, and to testify at an open public meeting on matters directly affecting the Commission's duties and powers.

Section 21 - Problem No. 33 Present language is unclear regarding the extent of the Commission's investigatory powers.

Solution Clarifies the Commission's power to issue subpoenas and compel attendance for authorized investigations.

Section 22 - Problem No. 34 Present language is internally inconsistent regarding the use of the therm "chapter".

Solution The bill makes such language consistent.

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

BILL NO. SHB 827

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Date 3-25-75

Staff Contact: Parsons

Committee on Constitution and Elections

Public Disclosure
Brief Title

House Committee on Constitution and Elections
Sponsor

The following is a section by section commentary on the intent of amendments to Initiative 276 as proposed in Substitute House Bill 827:

Section 1 - Clarifies certain interpretational problems in the law by defining the terms "compensation" and "continuing political committee" and clarifying the definitions of the terms "ballot proposition" and "contribution".

Section 2 - Clarifies the intent of the law as to the length of time a campaign depository must retain contributions reports and makes contribution reporting requirements more reasonable and workable for those political committees which exist for more than one purpose as well as those which obtain their funds from such events as rummage and bake sales.

Section 3 - Recognizes the peculiar nature of continuing political committees and attempts to make reporting requirements for these committees more reasonable and consistent with the law's intent by eliminating certain unnecessary reports, establishing certain uniform periodic reports, and requiring reports based on committee activity.

Further, provides for specification of alternative reporting dates for otherwise inactive committees holding surplus campaign funds, while requiring such continuing political committees to comply in all other respects with the same requirements which presently apply to all other political committees.

NOTE: An amendment to this section, as proposed by the Coalition for Open Government, would specify that certain activity on the part of a continuing political committee during the sixty days immediately preceding an election would trigger the same reporting obligation for that committee as that which presently applies to all other political committees.

Section 4 - Repeals present language which would be duplicated by implementation of Section 3 above.

Section 5 - Furthers the law's intent regarding indentification of contributors by requiring inclusion of contributors' addresses and makes reporting more reasonable for otherwise nonreporting committees which contribute to reporting committees by allowing three days to file the required report.

Section 6 - Clarifies the law's intention to prohibit concealing the source of any contribution in required reports.

Section 7 - Expands the scope of the law as it relates to the visibility of lobbyists to the legislature and the public by requiring the commission to annually publish a booklet containing pictures and background information on all registered lobbyists.

Section 8 - Clarifies the intended scope of the exempt status of legislative employees from having to report as lobbyists.

Section 9 - Makes lobbyist employers' reporting requirements more reasonable and workable by (1) delaying the deadline for submission of required reports; (2) limiting the scope of such reports to state elected officials, candidates, or members of their immediate families who have received at least $500 from a lobbyist employer during the preceding calendar year for personal employment or professional services or to whom such employers have paid money to influence, honor, or benefit such person; and (3) allowing salary levels to be reported by range rather than by specific amount.

Also, makes more information available to the public by requiring disclosure and identification of (1) the total amount of money spent by such lobbyist employers to influence the political and legislative process and (2) the names and addresses of all registered lobbyists employed by such employers.

Section 10 - Clarifies the scope of reports required from legislators and legislative committees on legislative employees and allows the chief administrative officer of each house to file these reports.

Also, makes the reports required from state agencies more reasonable and restores freer communication between legislators and state agencies by (1) limiting reportable contacts with legislators to those involving legislation directly affecting such agencies; and (2) eliminating the need for such agencies to identify all responses to requests from legislators.

Section 11 - Eliminates some confusion as to when an elected official must file the financial affairs statement by specifying the date prior to which such statement may not be filed.

Further implements the intent and broadens the scope of present law by requiring persons appointed to fill elective office vacancies to file such a statement.

Clarifies the intent of language requiring reporting and identification of (1) certain financial interests; and (2) transactions for preparation, promotion, or opposition to legislation, rules, rates, or standards by specifying the exact contents of such reports.

Further implements the intent of the law by expanding the required contents of such reports to include (1) identification of transactions between the reporting person's business concern and the governmental entity in which an office is held or being sought; and (2) identification of large time and demand deposits held by the reporting person's banking concern for other business or governmental entities.

Makes certain overly burdensome reporting requirements more reasonable (1) by raising the reporting threshold and limiting the scope of the definition of compensation which, taken together, make reportable certain transactions between the reporting person's business concern and other business or governmental entities; and (2) by allowing "sufficient" descriptions of reportable real property holdings instead of the presently required "legal" descriptions.

Section 12 - Makes consistent with the effective date of the entire chapter the date after which each state agency must have currently indexed its public records.

Sections 13, 14, 15, 16, 17 & 18 - Each of these sections makes language internally consistent with the rest of the chapter regarding use of the term "public records".

Sections 13 & 14 - These sections also increase public access to public records by requiring agencies to honor mail requests for such records.

Section 15 - In addition, this section also clarifies the breadth of the exemption from public access of the contents of real estate appraisals by specifically excluding those made relative to the sale of property prior to the sale being made or abandoned.

Section 19 - Makes language more reasonable within the law's intent regarding public access to "non-public" records which are conditionally donated to a state archive, library, college or university by specifically exempting such records from unrestricted public access.

Section 20 - Makes more reasonable the per diem reimbursement paid for expenses by the state to members of the Public Disclosure Commission by raising the daily amount to $40.

Broadens and clarifies the extent of the commission's ability to communicate with the legislature and state agencies by specifically authorizing certain allowable activities.

<u>Section 21</u> - Clarifies the extent of the commission's investigatory duties by specifically authorizing the issuance of subpoenas and compulsion of attendance by persons concerned.

<u>Section 22</u> - Makes language internally consistent regarding the use of the term "chapter".

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Filed with Court:	Court of Appeals Division II
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