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STATE OF WASHINGTON
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No. 96604-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner and Respondent,

v.

GROCERY MANUFACTURERS ASSOCIATION,

Respondent and Petitioner.

GROCERY MANUFACTURERS ASSOCIATION,

Respondent and Petitioner,

v.

ROBERT W. FERGUSON, Attorney General of the State of Washington,
in his Official Capacity,

Petitioner and Respondent.

GMA'S ANSWER TO BRIEF OF *AMICUS CURIAE* SEIU 775

Robert B. Mitchell, WSBA #10874
Aaron E. Millstein, WSBA #44135
Daniel-Charles Wolf, WSBA #48211
K&L GATES LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
(206) 623-7580

Bert W. Rein (*pro hac vice*)
Carol A. Laham (*pro hac vice*)
Matthew J. Gardner (*pro hac vice*)
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7301

Attorneys for Grocery Manufacturers Association

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ANSWER TO SEIU 775'S AMICUS BRIEF

SEIU 775 asks this Court to grant review of *State v. Grocery Mfrs. Ass'n*, 5 Wn. App. 2d 169, 425 P.3d 927 (2018), in order to resolve whether this Court's "primary purpose" test applies to the contributions prong as well as to the expenditures prong in the definition of "political committee." See RCW 42.17A.005(40) (2018). SEIU 775 points out that it, along with a wide range of nonprofit and for-profit organizations and corporations that engage in incidental political activity, could be ensnared by the State's all-encompassing definition of "political committee" unless this question is answered correctly.

The Court of Appeals refused to apply any "primary purpose" test to the contributions prong, even though the First Amendment concerns recognized in *Utter v. Building Indus. Ass'n of Wash.*, 182 Wn.2d 398, 341 P.3d 953 (2015), apply to contributions no less than to expenditures. And the State does not bother to deny that, if the Court of Appeals' holding is allowed to stand, the State can and will circumvent *Utter's* constitutional protections by bringing complaints under the contributions rather than the expenditures prong.

Because SEIU 775 encourages acceptance of review on one of the issues raised in GMA's petition for review, it may seem querulous to take issue with something SEIU 775 says. But on page 3 of its *amicus* brief,

SEIU 775 states it “seems highly likely” that electoral political activity was a primary purpose of GMA’s Defense of Brands Strategic Account. With due respect to SEIU 775, examining the purpose of an account—such as the Defense of Brands Strategic Account—is not the right test. Rather, the issue is whether the person accused of being an unregistered political committee—here, GMA—has, as one of its primary purposes, electoral political activity.

GMA is a 111-year-old trade association of American food, beverage, and consumer-product makers. For a brief but intense period, GMA found itself in the crosshairs of anti-GMO activists when it sought to advocate on behalf of the industry for uniform federal standards and against the activists’ attempts to impose state- and local-level GMO-labeling requirements. The State never tried to show that electoral political activity was one of GMA’s primary purposes, and the trial court made no finding in that regard.

DATED this 5th day of March 2019.

Respectfully submitted,

K&L GATES LLP

By /s/ Robert B. Mitchell
Robert B. Mitchell, WSBA # 10874
Aaron E. Millstein, WSBA # 44135
Daniel-Charles Wolf, WSBA #48211

Bert W. Rein (*pro hac vice*)
Carol A. Laham (*pro hac vice*)
Matthew J. Gardner (*pro hac vice*)
Wiley Rein LLP

Attorneys for Grocery Manufacturers
Association

K&L GATES LLP

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- cfuolyef@atg.wa.gov
- dc.wolf@klgates.com
- franco@workerlaw.com
- gartha@atg.wa.gov
- lindsay@atg.wa.gov
- mary.klemz@klgates.com
- mcbrider@lanepowell.com
- oyeates@ifs.org
- robbins@workerlaw.com

Comments:

Sender Name: Robert B. Mitchell - Email: rob.mitchell@klgates.com
Address:
925 4TH AVE STE 2900
SEATTLE, WA, 98104-1158
Phone: 206-623-7580 - Extension 7640

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