

FILED  
Court of Appeals  
Division II  
State of Washington  
1/22/2018 3:39 PM  
No. 49932-1-II

WASHINGTON STATE COURT OF APPEALS, DIVISION TWO

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FOOD DEMOCRACY ACTION,

*Appellant,*

v.

STATE PUBLIC DISCLOSURE COMMISSION,

*Respondent.*

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ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT  
The Honorable Gary R. Tabor, Presiding

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**REPLY BRIEF OF APPELLANT FOOD DEMOCRACY  
ACTION**

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## **I. INTRODUCTION**

On October 9, 2017, Appellant Food Democracy Action (“FDA”) submitted to this Court its Opening Brief of Appellant. Thereafter, the Respondent State of Washington obtained an extension of time (with no objection from Appellant) to file its Brief of Respondent, and then filed its Brief of Respondent on December 8, 2017.

Appellant sought and obtained (with no objection from Respondent) an extension of time to file its Reply Brief of Appellant from January 8, 2018 to January 22, 2018.

## **II. APPELLANT’S REPLY**

Appellant FDA has concluded that it wishes to rely on its Opening Brief, and thus will not be submitting a substantive Reply Brief of Appellant.

FDA is of the view that it clearly and succinctly presented its arguments in opposition to the judgment of the trial court in its Opening Brief, and wishes this Court, following oral argument on the merits, to render its decision on the basis of the briefing of the parties (one substantive brief submitted by each side, plus this summary brief submitted by Appellant), the Clerk’s Papers, the transcripts of hearings below, the exhibits, and the oral arguments before this Court.

### **III. AWARD OF ATTORNEY'S FEES**

Should it prevail in this appeal, FDA would be entitled to reasonable attorney's fees under both 42 U.S.C. § 1988 and RCW 42.17A.765(5). FDA therefore asks for an award of its reasonable attorney's fees and costs at trial and on appeal. *See*, also, RAP 18.1.

### **IV. CONCLUSION**

Upon discovering that its involvement in I-522 obligated it to register as a political committee, FDA admitted full responsibility and rectified its mistakes. The PDC's assertion, and the trial court's adoption of that assertion, that FDA's conduct amounted to prohibited concealment, extends RCW 42.17A.435 beyond its reach.

Concealment encompasses only affirmative conduct intended or known to be likely to obscure material facts. The PDC failed to establish the FDA engaged in such misconduct here. Accordingly, the trial court erred in granting summary judgment as to the PDC's claim for concealment under RCW 42.17A.435. This Court should reverse that determination.

The civil penalty imposed by the trial court was grossly excessive and constituted manifest error of a truly constitutional magnitude. Not only may it be raised for the first time in this appeal, but this Court should conclude that the trial court's action offends the Eighth Amendment.

Respectfully submitted this 22<sup>nd</sup> day of January, 2018.

**LAW OFFICE OF  
KENNETH S. KAGAN, PLLC**

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## DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on January 22, 2018, I caused a copy of the foregoing document to be delivered via e-mail, per the agreement of the parties, to the following:

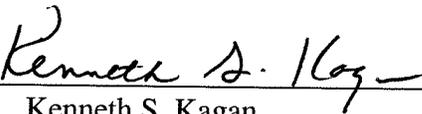
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Signed this 22<sup>nd</sup> day of January, 2018 at Seattle, WA.

  
\_\_\_\_\_  
Kenneth S. Kagan

**LAW OFFICE OF KENNETH S. KAGAN, PLLC**

**January 22, 2018 - 3:39 PM**

**Transmittal Information**

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