SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. TIM EYMAN AND TIM EYMAN WATCHDOG FOR TAXPAYERS LLC, Appellants/Petitioners.	No. 101844-4 APPELLANT/PETITIONER EYMAN'S RESPONSE TO GOLDWATER AMICUS MEMORANDUM

I. Introduction

The Goldwater Institute's Amicus Memorandum brings laser focus to issues "A" (continuing political committee) and "H" (unconstitutional as applied) set forth in the Petition for Review. It's illuminating discussion of those issues further justifies review pursuant to RAP 13.4(b): demonstrating conflicts between this published decision of the court of appeals with Supreme Court and other court of appeals precedent; significant questions raised under the state and federal

constitutions; as well as issues of public interest which should be determined by the Supreme Court.

Substantively, the unprecedented characterization of Mr. Eyman as a "continuing political committee" subject to draconian reporting requirements for soliciting charitable contributions to pay his personal expenses not only flies in the face of plain statutory language but, as applied, invades state and federal constitutional rights to free speech and privacy. Ultimately the result of this involuntary reporting regime, and further restrictions on the use of donated funds, makes participation in the political process "not worth it." Mr. Eyman is treated as an "enemy of the state;" however it might be more accurate to characterize the *state* as his enemy for his legitimate efforts to limit taxes through the initiative process.

II. Argument

A. The State's legitimate interest in ballot measure campaign finance is disproportional to the burdens imposed

1. State's interest in ballot measure finance is far less than in candidate finance

The logical beginning point when considering forced reporting of a person's private financial affairs to the government is the governmental interest served, if any, to justify the forced disclosure. Goldwater demonstrates interests involving corruption simply do not pertain to ballot measures and a legitimate government interest to disclose even direct campaign contributions and expenditures for ballot measures is less than self-evident, and never sanctioned by the U.S. Supreme Court. Moreover, even when such disclosure schemes are upheld, frequently they pertain only to contributions above a legislated minimum dollar amount, unlike Washington's Fair Campaign Practices Act (FCPA) which has no such minimum.

But here the government interest is even more remote if it encompasses personal contributions to pay an individual's private non-campaign expenses.

The Published Opinion, however, does not even recognize the connection between free speech and financial support, contrary to our Supreme Court precedent. *Wash. State Republican Party v. Wash. Pub. Disclosure Comm'n,* 141 Wn.2d 245, 254, 4 P.3d 808 (2000) Moreover the Published Opinion refused to follow *FEC v. Mass. Citizens of Life, Inc. (MCLF)*, 479 U.S. 238, 255 (1986), notwithstanding this seminal precedent has been cited and relied upon at least three times by our state Supreme Court. *MCLF* held excessive reporting requirements as applied to small entities violate free speech when as a result that speech is "simply not worth it." But that is an understatement when examining the burden imposed on Mr. Eyman, a single individual.

One aspect of the burden not discussed by Goldwater is the absolute prohibition on the use of "campaign funds" for "personal use." RCW 42.17A.445 The dilemma is this: a contribution for groceries is characterized as a "political contribution" when you receive it but a "personal expenditure"

when you spend it. This is self-contradictory since these are opposites.

But that was the State's position and the trial court finding.[1] Exhibit 352 summarized $150,695 in personal expenditures by Mr. Eyman, none for political campaigns. RP 456-57 But failure to report these expenditures for IRS taxes, rent, child support payments, etc., according to the State, subjected Eyman to fines of $10 *per day* for *each* expenditure—plus total forfeiture to the state of all such funds expended. RP 458 That totals $221,000. RP 460 For example Eyman would be fined $5,067 for making and failing to report one $1,037 child support payment! RP 460 And that doesn't even include the additional fine for paying personal expenses from campaign funds. RP 461

When the State's witness was asked "So if Mr. Eyman were a continuing political committee, how is he going to pay his

[1] See Finding 3.17(d) ("…pocketing more than $1.2 million dollars in concealed contributions for personal use.") and See Injunction para. 9 p. 31 (all contributions to Eyman must be to political committee and reported as well as expenditures).

child support?" the State's witness, AG investigator Tony Perkins, responded: "I'm not sure how to answer that question, how." RP 461 Perhaps the more general question would be *how* can any human being even live under such a perverse scheme?[2]

This contradiction in the Published Opinion highlights the absurdity of inconsistently treating a contribution for groceries as a reportable political contribution on the one hand and a prohibited but reportable "personal use" on the other. It cannot be both.

Under federal law such contributions or expenditures for personal use would neither be reportable as "political contributions" nor "political expenditures" because they would be used to "fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign." 11 CFR 113.1(g) Specifically, "routine living expenses that would have been incurred without candidacy, including the cost of food and residence, are not expenditures."

[2] Is that not the true objective of this litigation mounted by Attorney general Robert Ferguson against his political enemy?

11 CFR 100.153 Provisions of the federal election law inform our interpretation of the FCPA. *See* e.g. *San Juan County v. No New Gas Tax,* 160 Wn.2d 141, 157 P.3d 831, 838 (2007) (We may look to provisions in the federal act for guidance.) Common sense should be our guide as well.

2. Excessively complicated finance regulations are a prior restraint on speech

Confusing and vague reporting requirements render the statutory scheme void for vagueness in violation of the First Amendment. *State ex rel PDC v. Rains*, 87 Wn.2d 626, 630, 555 P.2d 1368 (1976) ("First Amendment rights are not to be abridged or even chilled by statutory vagueness.") These issues were called out expressly in the Petition for Review pages 29-34. The trial court repeatedly construed the statute broadly, not narrowly, then opined it was "ambiguous" whether "support" meant "direct" support or "indirect." Additionally, the Published Opinion characterized Mr. Eyman's belief it meant "direct

support" as "reasonable," but fined him millions for guessing wrong.[3] See, Opinion para. 148

The Published Opinion's "liberal construction" of the FCPA is inconsistent with the requirement of *OneAmerica Votes v. State,* 23 Wn. App.2d 951, 978 para. 54 (2022) that provisions which trench on First Amendment rights be narrowly construed. The Opinion is subject to Supreme Court review for that reason as well. Moreover, the Opinion's failure to even address the burden imposed on Eyman's free speech, even when the state bears the burden of proof, is yet further reason to grant review. See *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103, 114 (1997)

B. Restriction of a person's solicitation and expenditure of funds for private expenses intrudes on his "private affairs" without lawful authority

As may often be the case, the same government conduct may intrude on the same individual interest articulated from different perspectives. In this case privacy and free speech

[3] So much for the State's claim, and the trial court finding, he "intentionally" violated the Act.

overlap. The First Amendment right to solicit and use charitable contributions is abridged, as is forced disclosure of personal finances, and also the right of anonymous association. So too abridged are state constitutional rights of privacy secured by Const. Art. 1, Sec. 7. See Petition for Review App. C, p. 24 (quoting Const. Art. 1, Sec. 7 verbatim), Opening Brief p. 83

Goldwater demonstrates this court has recognized the Clause applies to a person's financial records. *State v. Miles*, 160 Wn.2d 236 (2007) And that the Clause was specifically adopted in language significantly different from the Fourth Amendment to protect private financial information. Amicus 13 The author of the Goldwater brief is himself a scholar on the subject and speaks with authority. *See* Sandefur, *The Arizona "Private Affairs" Clause*, 51 Ariz. St. L.J. 723, 729-33 (2019)

III. Conclusion

Goldwater's contribution to review of the Published Opinion is significant and noteworthy. It further demonstrates the RAP 13.4(b) criteria for review has been met.

I certify that this Statement contains 1346 words, in compliance with RAP 18.17(b).

Respectfully submitted this 7th day of June 2023.

GOODSTEIN LAW GROUP PLLC

By: *s/Richard B. Sanders*
Richard B. Sanders, WSBA # 2813
Counsel for Appellants

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

S. Todd Sipe Paul M Crisalli Eric Newman Attorney General of Washington PO Box 40100 Olympia, WA 98501-0111 Email: Todd.Sipe@atg.wa.gov paul.crisalli@atg.wa.gov eric.newman@atg.wa.gov Jessica Madeley, Paralegal Email: Jessica.Madeley@atg.wa.gov Jessica Buswell, Legal Assistant Email: Jessica.Buswell@atg.wa.gov Electronic Mailing Inbox Email: ComCEC@atg.wa.gov	☐ U.S. First Class Mail ☐ Via Legal Messenger ☐ Overnight Courier ☑ Electronically via email

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

Dated this 7th day of June 23 at Tacoma, Washington.

s/*Anne R. Lott*
Anne R. Lott, Legal Assistant

GOODSTEIN LAW GROUP PLLC

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Sender Name: Anne Lott - Email: alott@goodsteinlaw.com
Filing on Behalf of: Richard B Sanders - Email: rsanders@goodsteinlaw.com (Alternate Email: dpinckney@goodsteinlaw.com)

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