No. 101844-4

SUPREME COURT

OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II No. 56653-2-II

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STATE OF WASHINGTON,

Respondent,

v.

TIM EYMAN AND
TIM EYMAN WATCHDOG FOR TAXPAYERS LLC,

Appellants/Petitioners

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# BRIEF AMICUS CURIAE OF GLEN MORGAN IN SUPPORT OF APPELLANTS

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## INTEREST OF AMICUS CURIAE

For over a decade, Glen Morgan has been a full-time political activist, watchdog, and citizen journalist in Washington. He has a particular interest in election transparency and accountability and – most importantly -- the *functionality* of Washington's disclosure laws. His lay participation policing campaign disclosures has resulted in over 650 complaints filed with the Public Disclosure Commission (PDC) which in turn led to 200 politicians being found or admitting to disclosure violations. His efforts have yielded more than $600,000 in settlements and penalties.[1]

One of Mr. Morgan's priorities has been to illustrate the arbitrary treatment and varying interpretation of public disclosure laws depending on the political "bent" of the alleged violator.

Mr. Morgan is concerned that if this Court does not grant review of Division II's decision below – in particular, the portion that deems Mr. Eyman -- a natural persons – as a "continuing political committee" – then he and others across the political spectrum will be subject to oppressive and overreaching campaign

[1] For more information on the details of Mr. Morgan's accomplishments, see http://www.wethegoverned.com.

finance rules which do not further a legitimate governmental interest.

Division II's characterization of Mr. Eyman as a "continuing political committee" would allow the State (or – for that matter -- anyone filing a citizen initiated PDC complaint) to allege that any politically active member should be likewise characterized.

But designating an individual as a "continuing political committee" yields absurd results since political committee funds cannot be used for "personal use" except in very limited circumstances designated in the statute. See RCW 42.17A.445.[2]

[2] RCW 42.17.445: **Personal use of contributions—When permitted.**

Contributions received and reported in accordance with RCW 42.17A.220 through 42.17A.240 and 42.17A.425 may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record shall be maintained by the candidate or the candidate's authorized committee in accordance with RCW 42.17A.235.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. For example, expenses for child care or other direct caregiving responsibilities may be reimbursed if they are incurred directly as a result of the candidate's campaign activities. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17A.240.

The momentous impact of Division II's interpretation allowing a natural person to be designated a "continuing political committee" warrants review by this Court.

If Mr. Morgan – or any civically engaged individual – were continuing political committee, then under RCW 42.17A.445, he would be legally prohibited from spending his own money to pay for his and his family's own living expenses. It would be a financial death sentence. It would be illegal for him to use his own money to buy clothes for his four children, a medically necessary inhaler for his daughter, a Mother's Day gift for his mother, shelter for his family, or utility bills to keep his family warm in the winter.

## ARGUMENT

Given Mr. Morgan's extensive experience seeking consistency in the application of the state's campaign finance laws through citizen action letters and PDC complaints, there are literally thousands of individuals who he (or anyone else) could designate a "continuing political committee" who are past, current,

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(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW 42.17A.240. However, contributions may not be used to reimburse a candidate for loans totaling more than *four thousand seven hundred dollars made by the candidate to the candidate's own authorized committee.

or future officers of the ACLU, Washington Education Association, Black Lives Matter, Fuse Washington, Washington Conservation Voters, Transportation Choices Coalition, Pride, etc. Certainly, political consultants Christian Sinderman and John Wyble, as well as political committee officers Dick Muri, Lynn Rainey, and Mary Ann Ottinger, could also be so designated. If left standing Division II's ruling cuts both ways – and this Court should evaluate the wisdom of such an interpretation by considering how it might be applied to others and should ignore the short-run expediency of putting Mr. Eyman in his place.

Mr. Morgan's immediate concern revolves around himself being so designated, but he is also concerned about the thousands of individuals who would be fearful of becoming "too involved" in our state's political process due to the very legitimate concern that they simply do not wish to take the risk of being targeted and face the potential of devastating financial asphyxiation should the lower ruling survive. It is this profound chilling effect on political activity warrants granting review.

Under Washington law, are several types of political committees each of which has its own characteristics and requirements (candidate PACs, ballot measure PACs, continuing PACs, etc.). Mr. Eyman was specifically designated a "continuing

political committee" which the law defines as an "*organization* of continuing existence …. " See, RCW 42.17A.010(14). Emphasis supplied. Mr. Eyman is not an organization – he is a natural person. The decision below errs by ignoring the Legislature's express limitation that the requirements it places on Mr. Eyman was intended for groups. Mr. Morgan is concerned that if this Court does not grant review and the specific statutory definitions of the various committees described in RCW 42.17A are ignored, rational citizens will simply opt not to participate in democracy.

Were Mr. Morgan designated a "continuing political committee," he would be prohibited from spending his own money to support his own family (RCW 42.17A.445). But unlike Mr. Eyman who is recently divorced, Mr. Morgan is married, and his wife receives a salary as a teacher. As such, her income allows Mr. Morgan to spend time on his activism. Accordingly, under Division II's logic, *her* income and expenditures would need to be reported each month as in-kind contributions and in-kind expenditures for Glen Morgan's one-person PAC.

But the absurdity would go further. Given the longstanding interpretation of the FCPA's reporting requirements that *each individual item* purchased with committee funds be reported, it would follow that Mr. Morgan's one-person PAC would not be

permitted to simply report that on July 5, 2023, his wife spent $58 of her money at Safeway for "personal expenses" – but rather -- his PAC's Schedule B form would need to list the date, each type of food that was purchased and its cost, what individual soap and paper towels were purchased and their costs, what individual magazines were purchased and their costs. His monthly reports would even require their church donations (name and address of the church and the donation amounts would need to be reported as well). There is simply no legitimate governmental interest in this information.

Division II's unprecedented interpretation heavily burdens privacy rights and freedom of speech — a right protected by strict scrutiny where the State bears the burden of justifying its burdens and must prove narrow tailoring and a compelling state interest.

How could such an application be "narrowly tailored"? What would be the compelling state interest in requiring Mr. Morgan – or anyone else -- to disclose how much his family spends on eggs, meat, bread, fruits & vegetables, shelter, school costs for their four children, and donations to their church *every month*? The irony that such disclosures are not required of even elected public officials should not be lost on the Court. If those officials are not required to do so, then why should an unelected

individual person be burdened even more with such detailed reporting requirements and prohibited from spending their own money for personal expenses?

Many people, probably most, would choose not to participate in the political process if the price of doing so was to submit to a state audit of their finances. In *NAACP v Patterson*, 357 U.S. 449 (1958), the U.S. Supreme Court held that required disclosure of an association's membership lists absent a compelling state interest is an infringement of the right of free association. See also the more recent case of *Americans for Prosperity v. Bonta* case, 594 U.S. ___, 141 S. Ct. 2373 (2021).

A heavy a regulatory burden is likely to convince those who would otherwise become engaged in the political process, "that the contemplated political activity was simply not worth it." *FEC v. Mass. Citizens for Life, Inc. (MCFL)*, 479 U.S. 238, 255 (1986). In that case, the U.S. Supreme Court found it unconstitutional for the government to impose significant regulatory and reporting costs on a small statewide political group as the price of political speech. Mr. Morgan is an individual and therefore is even smaller than the small statewide political group under consideration there. If it was unconstitutional for a small

group, how could it not be unconstitutional for an individual person?

Finally, assuming Mr. Morgan (or anyone else) were to be designated a one-person PAC, he would also face the burden of hiring a treasurer to collect, track, and report on his family's personal income and expenses (in his case, the personal expenses paid for with his wife's income). There is a legitimate question as to whether or not he could find *anyone* willing to be a treasurer and be legally liable for such detailed reporting – a further impediment to participation.

Without review, Division II's decision will have a chilling effect on people across the political spectrum due to its ambiguity, unprecedented breadth, and inadequate review and understanding of its far-reaching implications. Further, pronouncement a decision that changes the landscape from a court of appeals, could result in a split between divisions should this issue be presented in another Division. Accordingly, it is well worth it for this Court to provide a final, binding and uniform decision on the merits.

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## CONCLUSION

Division II's unprecedented interpretation of the FCPA puts a target on the back of every current and future citizen across the political spectrum in Washington state, so there is broad public interest in it being reviewed by the Supreme Court. The Petition should be granted.

RESPECTFULLY SUBMITTED, this 26th day of May, 2023.

s/ Nick Power
_____
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## Word Count Certification

I certify that this pleading contains 1,887 words.

s/ Nick Power
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Nicholas Power WSBA# 45974

## LAW OFFICE OF NICHOLAS POWER

## May 26, 2023 - 9:23 AM

## Transmittal Information

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|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 101,844-4 |
| **Appellate Court Case Title:** | State of Washington v. Tim Eyman, et al. |
| **Superior Court Case Number:** | 17-2-01546-3 |

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