

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
GLEN MORGAN AMICUS
MEMORANDUM

I. Introduction

The Glen Morgan Amicus Memorandum illustrates the real-world impact of the unprecedented restrictions placed on Mr. Eyman *for the rest of his life* by the Published Opinion. As Amici makes clear, this case is unlike any other campaign finance case ever. It illustrates issues of public interest justifying

review which should be determined by the Supreme Court as well as significant questions under the Constitution. RAP 13.4(b)

Substantively, the unprecedented characterization of Mr. Eyman as a “continuing political committee” results in, in Amici’s words, “a financial death sentence” due to RCW 42.17A.445 which prohibits any continuing political committee from spending any of its funds for personal use. So designated, this results in Mr. Eyman being prohibited from spending his own money, whether received from his political activities, non-political work, or charity, to pay for food, lodging, child support, or other living expenses. Moreover, contrary to the First Amendment it compels disclosure of private financial affairs, private associations, and abridges the right to solicit and receive charitable contributions.

No other alleged individual violator of campaign finance laws, whether through settlement or court decree, has ever been characterized individually as a “continuing political committee”

and subjected to lifetime restrictions on both his political and non-political activities.

The consequence of such a precedent, if allowed to stand, is breathtaking to others—such as Mr. Morgan.

II. Argument

A. Amici focuses on RCW 42.17A.445 which prohibits any political committee from spending its' money for personal use

As pointed out in the Petition for Review pages 32 and 33: “If Mr. Eyman is a ‘continuing political committee’ he must not only hire a treasurer, disclose every penny of charitable income and every expenditure, but turn over all contributions to the committee bank account administered by the treasurer, and expend none of it on himself. RCW 42.17A.445.”

This is not a case where the injunction simply requires Mr. Eyman to report his *campaign* income and *campaign* expenses related to a campaign. Rather RCW 42.17A.445 applies to all political committees and so prohibits him from spending any money he receives, from any source, to live.

Although the Published Opinion purports to reject Appellant's claim that the injunction violates his constitutional right to seek charitable assistance, Published Opinion para. 170, (claiming "the injunction does not prohibit Mr. Eyman from soliciting contributions for himself"); it misleadingly ignores the mandate if he "solicits personal donations for his political work" he must establish a committee and assure all such charitable donations are made to the committee, not himself, and administered by the committee treasurer. But if Mr. Eyman is a continuing political committee, then all his money must go to the committee treasury and be administered by the committee treasurer, and none may be expended for his personal benefit.

RCW 42.17A.445

Paragraph c of the injunction requires all contributions be reported (except W-2 and legal defense) without regard to his "political work." Elsewhere the Published Opinion construes every contribution to Mr. Eyman as an "indirect" political contribution, and every expenditure as well. If he stands on the

corner with a sign begging for funds, he cannot touch the funds himself, and instead, must tell the contributor to send it to the treasurer, as all receipts must be received by the treasurer, deposited in the committee's treasury and reported. But even then, none of it may be used for Mr. Eyman's living expenses. His constitutional right to beg is therefore abridged. That is exactly the activity the Published Opinion prohibits when it affirms his characterization as a continuing political committee.

The whole basis of the "continuing political committee" characterization is Mr. Eyman's solicitation and receipt of charitable contributions to pay his personal expenses.

However, compelled disclosure of charitable solicitation violates the First Amendment and is subject to exacting or strict scrutiny. *State v. TVI, Inc.* __Wn.3d__, para. 22, 524 P.3d 622 (2023) Under "exacting scrutiny" there must be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest"; whereas under "strict scrutiny" the government must adopt "the least restrictive means

of achieving a compelling state interest.” *Americans for Prosperity v. Bonta*, 141 S.Ct. 2373, 2383, 210 L.Ed.2d 716 (2021) “Exacting scrutiny” moreover requires disclosure regimes employ the least restrictive means to achieve their ends because “First Amendment freedoms need breathing space to survive.” *Id* at 2384

But here there is no legitimate interest in forced disclosure of Mr. Eyman’s personal finances and associates, let alone an important or compelling one. Moreover, if disclosure of *campaign* finance for voter education is the claimed and sufficient interest, the FCPA may only employ the least restrictive means to achieve that narrowly defined end—exactly the opposite of the Published Opinion.

Additionally, the government bears the burden to prove the speech it seeks to prohibit is unprotected. *TVI*, para. 24 It is not enough to determine if there is sufficient evidence in the record to support the court’s finding, rather an independent review of the record is required to ensure the correct First

Amendment standards are applied to confine any unprotected category to acceptably narrow limits. *Id.* Therefore this court does not defer to trial court findings on “critical” facts which involve the legal determination whether the speech is unprotected. *Id.*

But here there is no claim let alone evidence the solicitation of charitable contributions to pay personal expenses is anything other than purely protected speech nor is there any showing that the prohibition of same is “narrowly tailored” to serve “a sufficiently substantial interest.” *Id.* para. 61

Moreover, the injunction grants, for the remainder of Mr. Eyman’s life, express authorization for the Attorney General to conduct post-judgment discovery “including obtaining access to all records or documents under the control of [Eyman] for purposes of monitoring his compliance with the terms of the injunction against him.” *See* Judgment at 4-5.

To fully appreciate the level of detail required by the injunction, the trial court ordered Mr. Eyman to answer

interrogatories and produce hundreds of pages of documents detailing literally every financial transaction of whatever nature after entry of the injunction in February 2021. It required him to disclose and detail all of his monthly living expenses, including what he spends every month on groceries, eating out, expenditures for car maintenance and use, as well as literally every other personal expenditure. (See Exhibit A) This does not serve a “sufficiently important government interest”, nor even a legitimate one.

Even assuming there is *any* governmental interest in disclosure of actual contributions or expenditures for ballot measure *campaigns*, that cannot possibly satisfy exacting scrutiny of regulation much less prohibition of charitable contributions to pay personal expenses. Nor are the State’s allegations either “properly tailored” to narrowly target a sufficient governmental interest nor supported by “exacting proof.” *TVI*, para. 73, 83

Amici is not exaggerating when observing the State can demand the intimate details of an individual's personal finances any time for the rest of one's life. What compelling or important governmental interest does this serve? Voter education regarding *campaign* finance is not among them.

And as Amici points out, the level of absurdity escalates. With such a lifetime characterization as a continuing political committee, if Mr. Eyman were to obtain a non-political job (working at Boeing, for example) and yet continued his political advocacy during off-hours, under the Published Opinion he could not receive the money he earned from his non-political employer. It would have to be sent to Mr. Eyman's treasurer and be reported as a political contribution (as pointed out by Amici). And after receiving such non-political income and depositing it into the committee's treasury, that treasurer would be legally prohibited from spending any for Mr. Eyman's personal expenses.

But the Published Opinion goes further: even if Mr. Eyman discontinued his political work, the characterization of him as a continuing political committee – along with its’ corresponding restrictions – would continue *forever*. There is no precedent for this anywhere, ever.

The Moxie Media scandal actually changed the outcome of an election (“Moxie Media engaged in astroturfing that resulted in a surprise loss for incumbent Jean Berkey” https://en.wikipedia.org/wiki/Moxie_Media_scandal). “PDC commissioners said Moxie’s ‘mind boggling’ and ‘reprehensible’ actions had made a mockery of disclosure laws.” <https://www.seattletimes.com/seattle-news/political-consultant-moxie-media-has-huge-year-after-huge-fine/>.

But there the AG did not ask for *any* restrictions on Moxie Media’s future political activities.

In contrast, Mr. Eyman’s alleged violations did not change the outcome of any election and yet he is subject to a lifetime of government audits of his personal finances, a lifetime ban on

using his own money to pay his personal living expenses, and numerous lifetime restrictions on his future political activity (plus a \$6 million judgment, non-dischargeable in bankruptcy, and ever increasing at 12% per annum.)

The Morgan amicus provides significant specificity to the real-world impact of the Opinion and vividly illustrates the absurd results when the statutory definition of “continuing political committee” (“an organization”) is ignored and applied to a single individual.

In addition, 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.”) But here one risks his life much less his political future when engaging in otherwise protected political advocacy. *See* Petition for Review pages 29-34.

The appellate 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 that it meant “direct support” as “reasonable,” but fined him millions for guessing wrong.¹ See, Opinion para. 148

The Opinion’s “liberal construction” of the FCPA is also inconsistent with the requirement of *OneAmerica Votes v. State*, 23 Wn.App.2d 951, 978 para. 54, 518 P.3d 230 (2022) provisions which trench on First Amendment rights be strictly construed and the State must demonstrate the infringement “is necessary to secure a compelling state interest and that it is narrowly drawn to achieve that end.” (Quoting *Burson v. Freeman*, 504 U.S. 191, 198, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992)) The Opinion is subject to Supreme Court review for that reason as well.

Additionally, the Opinion’s failure to even address the burden imposed on Mr. Eyman’s free speech, even when the

¹ So much for the State’s claim, and the trial court finding, he “intentionally” violated the Act.

State bears the burden of proof, is yet a further reason to grant review. See *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103, 114 (1997).

The point here is not only the outrageous treatment of Mr. Eyman, but more fundamentally the well-founded fear of others who dare to participate in the political process, especially those advocating views with which the attorney general may disagree.

In the final analysis this is not a case about filing technically correct and lawfully required campaign finance documents, but rather the power of the State to destroy dissenters.

How else can one explain the barrage of press releases from the Attorney General defaming Mr. Eyman? These were offered into evidence under ER 904 however excluded based on the Attorney General's objection of relevance to legitimate issues in this court proceeding. CP 3474, Doc. 141 ("This document should be rejected because it has no discernable relevance to any outstanding issue in this case.")

So why issue defamatory press releases in the first place other than to personally defame Mr. Eyman and promote Mr. Ferguson's political career?² How many law firms other than the Attorney General have PR departments dedicated to demonizing their adversaries and promoting the political fortunes of their partners?

Even the Findings proposed to the trial court by the State served an ulterior motive—fundraising for Attorney General Ferguson. It works like this: the AG proposes Findings with language helpful to his yet unannounced gubernatorial campaign and highly defamatory to Mr. Eyman³; the Findings are entered without notice or opportunity to object contrary to CR 52(c)⁴; and

² Compare RPC 3.6(a) (lawyer shall not make extrajudicial statements with substantial likelihood of prejudicing adjudicative proceeding); RPC 3.8(f) (prosecutor in criminal case shall not make extrajudicial comments “that have a substantial likelihood of heightening public condemnation of the accused...”) Cf. Criminal Justice Standards for the Prosecution Function (Fourth Ed. (2017) 3-1.6 Improper Bias Prohibited (prosecutor shall not use partisan or political or personal considerations in exercising discretion); 3-1.7 (prosecutor should not use interest in personal aggrandizement to affect judgment)

³ At the court's request proposed Findings were submitted by both sides without any prior indication from the court how it might rule.

⁴ The lack of proper notice was raised to the Court of Appeals but rejected because “Eyman did not object at that time or after

the most inflammatory are quoted in the Ferguson fund raising letter as if the work product of an impartial judge rather than an aspiring politician. CP 5667

2. First Amendment Freedoms are chilled and individuals may not gamble free exercise on draconian government penalties.

As argued by Mr. Morgan’s brief, “literally thousands of individuals” could be labeled “continuing political committees” under the rationale of the Published Opinion requiring only “indirect” support of a candidate or ballot measure. Amicus p. 6 Although the current target is a political conservative, that is no limiting principle to prosecution: civil or criminal. “Show me the man and I’ll show you the crime” is the motto of a zealous prosecutor.⁵ Nor is the statutory text that only “organizations” may be labeled a “continuing political committee” any bar to prosecution under this rationale. Amicus 7

trial was over to the proposed findings or injunction.” Published Opinion para. 65 On reconsideration, however, Mr. Eyman identified timely filed written objections to the failure to provide required notice. CP 4972 But then the Court of Appeals merely deleted the false pretextual claim from the opinion, otherwise refusing any relief. See Order on Reconsideration.

⁵ Lavrentiy Beria

If “indirect” support for campaigns or ballot measures is the only limiting criteria, there *are* no limits. As pointed out by Mr. Morgan, and illustrated by Mr. Eyman, any source of income for any purpose puts one in jeopardy for lifelong servitude and relinquishment of First Amendment freedoms.

And no expenditure could go unreported. Amicus 8 All this is judicially imposed without express statutory mandate absent even a minimal state interest, much less one sufficiently important with means narrowly tailored to achieve it. Amicus 9 Compare *Bonta*, 141 S.Ct. at 2383-84

As amicus observes, “A heavy 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)” Amicus 10

Conclusion

Amicus well-articulated the reason for review: “Without review, Division II’s decision will have a chilling effect on people across the political spectrum due to its ambiguity, unprecedented breath, and inadequate review and understanding of its far-reaching implications.”

I certify that this brief contains 2,486 words, in compliance with RAP 18.17(b).

Respectfully submitted this 26th 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:

<div>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</div>	<div><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</div>
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 26th day of June 2023 at Tacoma, Washington.

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

EXHIBIT A

18 **INTERROGATORY NO. 15:** Identify your monthly expenses for housing since February 10,
19 2021, including:

- 20 a. Your monthly rent, mortgage, or other cost for housing;
21 b. The person or people you have paid for housing since February 10, 2021;
22
23

- 1 c. Whether the amount you pay for housing has included a discount or reduction at any
2 point since February 10, 2021, and, if so, the extent and duration of the discount or
3 reduction;
4 d. The source of funds you have used for housing expenses since February 10, 2021,
5 including the account and routing numbers, and the institution name and address for
6 all bank accounts you have used to make related payments;
7 e. Whether you were provided housing at no cost at any time since February 10, 2021,
8 or had housing expenses paid on your behalf; and, if so, the name and address of the
9 person who provided housing or paid housing expenses on your behalf, the month or
10 months the housing was provided or the expenses paid, the manner in which payment
11 for housing was made by each source, and the total value of housing expenses or
12 payments from each source.

13 **ANSWER:**

14 a.
15 Provided on bank statements.

16 b.
17 Carol Williams (bank statements show payments totaling \$63,250 from Feb 10, 2021
18 through Feb 17, 2023).

19 c.
20 The rent varies and is by mutual agreement.

21 d.
22 Personal funds – see provided bank statements. Some rent payments were initially and
23 mistakenly paid by the legal defense fund, but those were all corrected/reversed on
3/5/2021. See bank statement for Legal Defense Fund – Bank of America savings
account # [REDACTED] 2926, Routing #125000024.

24 e.

1 No (eventually each month's rent was paid using personal funds)

2 **INTERROGATORY NO. 16:** Identify your monthly expenses for groceries and household
3 items since February 10, 2021, including:

- 4 a. The average amount you have paid each month for groceries and household items
5 since February 10, 2021;
- 6 b. The source of funds you have used for groceries and household items since
7 February 10, 2021, including the account and routing numbers, and the institution
8 name and address for all bank accounts you have used to make related payments;
- 9 c. Whether you have been provided groceries or household items at no cost at any time
10 since February 10, 2021, or had related expenses paid on your behalf; and, if so, the
11 name and address of the person who provided groceries and household items or paid
12 related expenses, the month or months in which the items were provided or the
13 expenses paid, the manner of payment for any such expenses, and the total value of
14 the items or payments from each source.

15 **ANSWER:**

- 16 a.
By my calculation, the average amount was \$672.64
- 17 b.
18 Personal accounts – provided on bank statements.
- 19 c.
20 No.

21 **INTERROGATORY NO. 17:** Identify your monthly expenses for takeout food or restaurant
22 dining since February 10, 2021, including:
23

- 1 a. The average number of times you have eaten takeout or restaurant meals in each
2 month since February 10, 2021;
- 3 b. The amount you have paid each month for takeout or restaurant meals since
4 February 10, 2021;
- 5 c. The source of funds you have used for takeout or restaurant meals since February 10,
6 2021, including the account and routing numbers, and the institution name and
7 address for all bank accounts you have used to make related payments;
- 8 d. Whether you have been provided takeout or restaurant meals at no cost at any time
9 since February 10, 2021, or had takeout or restaurant expenses paid on your behalf;
10 and, if so, the name and address of the person who provided the meal or paid related
11 expenses, the month or months in which the items were provided or the expenses
12 paid, and the total value of the items or payments from each source.

13 **ANSWER:**

14 a. By my calculation, the average was 8.

15 b.
16 Provided on bank statements.

16 Feb 2021: \$166.19
17 March 2021: \$541.02
18 April 2021: \$238.80
19 May 2021: \$318.49
20 June 2021: \$176.65
21 July 2021: \$204.00
22 Aug 2021: \$634.41
23 Sept 2021: \$437.11
Oct 2021: \$487.62
Nov 2021: \$1155.61
Dec 2021: \$246.13
Jan 2022: \$125.25
Feb 2022: \$109.06
March 2022: \$150.46

1 April 2022: \$140.98
May 2022: \$276.81
2 June 2022: \$452.53
July 2022: \$516.47
3 Aug 2022: \$271.22
Sept 2022: \$495.60
4 Oct 2022: \$387.89
Nov 2022: \$893.73
5 Dec 2022: \$443.49
Jan 2023: \$143.70
6 Feb 1, 2023 through Feb 17, 2023: \$156.88

7 c.
Provided with personal funds – see personal account bank statements.

8 d.
9 No.

10 **INTERROGATORY NO. 18:** Identify your monthly expenses for gasoline and auto
11 maintenance since February 10, 2021, including:

- 12 a. The average amount you have paid each month for gasoline and auto maintenance
13 since February 10, 2021;
- 14 b. Whether you have incurred any auto-related expenses in excess of \$500 on a single
15 occasion since February 10, 2021, and, if so, the date, amount, and nature of the
16 expense;
- 17 c. The source of funds you have used for gasoline and auto maintenance since
18 February 10, 2021, including the account and routing numbers, and the institution
19 name and address for all bank accounts you have used to make related payments; and
- 20 d. Whether you have been provided gasoline or auto maintenance at no cost at any time
21 since February 10, 2021, or had related expenses paid on your behalf; and, if so, the
22 name and address of the person who provided the services or paid the expenses, the
23

1 month or months in which the services were provided or the expenses paid, and the
2 value of the services or payments from each source.

3 **ANSWER:**

4 a. By my calculation, the average amount was \$380.63.

5 b. Provided on personal account bank statements.

6 8/23/2021 – \$1000.38 – auto maintenance (basic parts & services)

7 9/26/2022 – \$691.98 – replaced tires

8 9/26/2022 – \$576.33 – auto maintenance (basic parts and services)

9 c.

10 Personal funds – see personal account bank statements.

d. No.