No. 61503-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

THE STATE OF WASHINGTON,

Plaintiff-Respondent,

v.

TIM EYMAN,

Defendant-Appellant.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

The State's response reinforces that the fine imposed violates the Excessive Fines Clauses of the Washington and U.S. Constitutions. This Court required the trial court to determine whether the $2.6 million fine was excessive in light of Eyman's inability to pay. Yet the trial court erroneously restricted its inquiry to a narrow, arbitrary three-month pre-judgment period—before the injunction ended his career, before bankruptcy liquidation, before appellate fees, and before interest ballooned the total penalty to more than $8 million. Nevertheless, the evidence from that period overwhelmingly demonstrates Eyman's inability to pay. The State's invitation to disregard straightforward arithmetic, settled excessive fines precedent, and practical realities contradicts *Long*, centuries of jurisprudence, and the record.

The Excessive Fines Clause applies to the attorney fees. The prior panel clearly misread the FCPA's punitive provisions and erred in overlooking *City of Seattle v. Long*, which held that

the Clause extends to costs arising from the enforcement of a punitive law. 198 Wn.2d 136, 493 P.3d 94 (2021). After Appellant filed the Opening Brief, the Washington Supreme Court confirmed that the Clause applies to attorney fees. *State v. Ellis*, 579 P.3d 37 (2025). Considering *Ellis* and the full briefing here, this Court should revisit the issue and hold that the attorney fees and costs imposed here are subject to the excessive fines clauses.

Finally, this Court should hold that the remaining restrictions in the injunction violate the FCPA. The State does not dispute that point; instead, it seeks to evade review forever, even as the injunction continues to inflict ongoing harm. This Court should bring that violation to an end.

CORRECTION TO STATE'S FACTUAL ALLEGATIONS

The State not only misapplies the law but also mischaracterizes Appellant's arguments. It claims that the Opening Brief said Eyman was "indigent" *before* the judgment was entered. State Br. 41 (citing Opening Br. 41). In fact, Eyman

demonstrated that the judgment itself left Eyman "impoverished." CP 308-12 (2025 declaration that the judgment devastated his career, resulting in ownership of only a 2013 Ford Explorer and $11,103). The State may quibble over the terms "destitute" or "indigent," but the record on remand established that Eyman has had no income for years, lost virtually all assets, owed his own attorneys $260,000, CP 744, and owed the State roughly $8 million. *Id.*; CP 741 (income tax returns between 2019 and 2022 summed to a negative amount; 2023 and 2024 tax returns showed no income). This record leaves no doubt about the extent of Eyman's financial collapse.

The State claims it had no opportunity to conduct discovery into Eyman's then-present circumstances. State Br. 38. Yet below, the State claimed in a motion to compel discovery that the injunction gave it the right, for the rest of Eyman's life, to demand and review his financial records of every type. CP 134. And the State made exhaustive demands, which Eyman complied with, despite his inability to pay even his own attorney.

CP 775-838 (extensive discovery responses); CP 744 (discovery responses took hundreds of hours, resulting in over $60,000 in attorney fees that Eyman could not pay).

I. The Fines Are Unconstitutionally Excessive

A. The State imposes the wrong standard of review to the Excessive Fines questions presented here

The State acknowledges that the substantial evidence standard applies only to the superior court's factual findings. State Br. 32. And it concedes that the ultimate determination of the fine's excessiveness, including the relevant time for assessing ability to pay, is a legal question subject to *de novo* review. *Id.* But the State incorrectly converts "ability to pay" into a factual determination, even though *Long* rejects that approach. *See* State Br. 31-32.

Eyman is not challenging the trial court's singular factual finding that he was making monthly payments to the State before the judgment was entered. CP 846-47. Rather, he challenges the court's untenable legal conclusion that his "financial circumstances" meant he had an ability to pay $5,503,169 at the

time of the original judgment—exceeding $8 million on remand. CP 847. Ability to pay under the Excessive Fines Clause is a legal issue, as *Long* demonstrates.

In *Long*, neither party "contest[ed] the facts in th[e] case," including Long's income, the amount of the fine, and his assets. 198 Wn.2d at 143, 145, 175 ($547 impoundment fee; $300 monthly income; owned a truck and work tools). Using those facts, the Court reviewed *de novo* whether Long had an ability to pay. *Id.* at 145. Although Long technically had the funds (unlike Eyman), the Court held the impoundment fee exceeded his ability to pay as a matter of constitutional law. *Id.* at 174. This was a legal judgment.

Here, the trial court made one factual finding: Eyman "made monthly payments on the penalties assessed by the Court from November 2020, to January 2021." CP 847. Several other facts about his financial circumstances during that time are undisputed: the payments were $10,000 per month; Eyman received charitable donations averaging $25,000 per month; and

in February 2021, Eyman had $81,205 in his bank account (mostly from a car accident settlement), and $7,501 in his legal defense fund. *See* State Br. 40-41; Opening Br. 16-18. Eyman also offered additional unrebutted evidence about his dire recent financial circumstances. Opening Br. 14-18. As in *Long*, whether his financial circumstances mean the fines are excessive is a legal question that this Court reviews *de novo*. *Long*, 198 Wn.2d at 163. *See also United States v. Bajakajian*, 524 U.S. 321, 336-37 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998) (excessiveness inquiry was *de novo*).

Nevertheless, even under the State's preferred standard of review regarding ability to pay, Eyman prevails. *See Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003) (substantial evidence standard requires "evidence sufficient to persuade a rational fair-minded person the premise is true" and "questions of law and conclusions of law are reviewed de novo"). The lower court's judgment rested not only on erroneous legal rules, but also a mathematical impossibility.

B. The ability to pay analysis cannot be limited to a pre-judgment snapshot that ignores the effects of the judgment

The State insists the trial court properly limited its review to November 2020 through January 2021 ("when the trial record was created"), because *Long* "reviewed defendant's financial condition at the time of the impoundment hearing." State Br. 25, 34. But *Long* was an appeal from the impoundment hearing; that was the only record available to the court. 198 Wn.2d at 143-45. Nowhere does *Long* suggest that the ability-to-pay inquiry should be restricted to a pre-judgment snapshot. Rather, *Long* demonstrates that courts should consider the realistic impact of the fine, the size of the fine compared to income, and whether the fine creates or perpetuates destitution. *Id.* at 175. Turning a blind eye to the impact of a judgment—as the lower court did—flouts *Long*'s practical approach.

Long relied on history, looking to how courts at common law and in early America determined whether fines were excessive. 198 Wn.2d at 168-71. That same history establishes

that courts should consider post-judgment circumstances offered by a defendant. *See* Opening Br. 28-32. The State offers no rebuttal to that history. *See* State Br. 34-37. Instead, it relies on Second and Eighth Circuit cases while omitting that those same decisions deemed ability to pay irrelevant under the Eighth Amendment's Excessive Fines Clause—squarely at odds with *Long*. *See* State Br. 37 (citing *United States v. Viloski*, 814 F.3d 104, 115 (2d Cir. 2016); *United States v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011). Indeed, *Long* expressly cited and rejected *Smith*. *Long*, 198 Wn.2d at 170. The State also argues that post-trial circumstances must be ignored in an excessiveness inquiry and instead brought separately via a CR 60 motion. That would discourage judicial efficiency and flout the constitutional rule that ability-to-pay requires a look at real-world circumstances.

Lacking any legal authority to justify the lower court's refusal to consider post-judgment circumstances, the State resorts to citing divorce cases that divide estates upon marital dissolution. State Br. 36. Divorce bears no comparison to a

sovereign imposing punishment upon its subjects. *See King v. King*, 162 Wn.2d 378, 385-87, 174 P.3d 659 (2007) (distinguishing marriage dissolution cases from constitutional cases and holding "fundamental constitutional rights are not implicated in a dissolution proceeding"). Here, the injunction barred Eyman from his occupation, chilled donor support, and forced the liquidation of his assets through bankruptcy—all while appellate costs mounted and 12% interest piled on another $700,000 each year. CP 310; Opening Br. at 14. Now, the fines and fees are approaching $9 million—it has grown by more than $200,000 just since Appellant filed the Opening Brief. The trial court refused to consider any of these facts. CP 847; *id.* at 895 ("I don't need to hear about the relevant timeframe. The relevant timeframe is whether or not it was excessive at the time of the award, February 2021."). And the State does not dispute that Eyman cannot pay even one month of interest.

The State argues that the Court should not consider post-judgment facts about Eyman's financial status, because it would

cause "problems" to allow Eyman's "post-judgment conduct" to influence the final amount of the fine. State Br. 37, 59. But this concern about potential perverse incentives is misplaced. It faults Eyman for pursuing legitimate legal remedies (what the State derisively calls "failed motions and petitions") and defaulting on his $10,000 per month payments when he ran out of money. *See id.* Running out of funds, however, is not a "post-judgment choice[]." State Br. 36. And Eyman cannot be penalized for defending his rights in litigation, particularly when the State itself blocked his early attempt to seek a default judgment against himself, which would have reduced both his own attorney fees and the State's. CP 312. Now that the fines and fees approach $9 million and Eyman has paid almost $1.4 million to his own attorneys, the State implies he should be punished for litigating his case. This is not merely incorrect; it is egregious.

Furthermore, the State's arguments about perverse incentives cut against its position. The counterproductive effect of excessive fines is one of the values that animate the Excessive

Fines Clause. Opening Br. 28-32. If fines drive people to the wall, *see id.* at 30, they're less likely to strive to rebuild their lives (and thereby pay any fines) than those who have hope of getting out from under their debts. It is not productive to impose a fine that will "continually grow[] larger and can never be paid in full." *Minnesota v. Maidi*, 520 N.W.2d 414, 422 (Minn. Ct. App. 1994) (Amundson, J., concurring in part). The Court should hold that the trial court erred as a matter of law and that the fines are unconstitutionally excessive.

C. Even at the time of the original judgment, the fine exceeded Eyman's ability to pay

Assuming *arguendo* that the lower court chose the right window in time and could ignore everything that happened thereafter, its decision was still legally erroneous and mathematically impossible. The undisputed facts demonstrate that the fines were unconstitutionally excessive under *Long*, which requires consideration of whether the punishment drives the individual into financial ruin. *See Long*, 198 Wn.2d at 171.

1. Eyman's assets and potential income were already inadequate

The State and the trial court treat Eyman's pre-judgment, $10,000 monthly payments toward sanctions as proof of his ability to pay the original $5.5 million in fines and fees at the time of the first judgment. State Br. 42-43; CP 846-47. This holding is unmoored from arithmetic, reality, and the devastating impact of the State's prosecution of this case, and the judgment itself on his career. CP 741-43. By February 2021, he had already been "unemployed for two years because no one would hire [him] or contract with [him]." CP 741. The $10,000 monthly payments were insufficient to cover the interest alone, which is now almost $60,000 per month. Even if the State forgave the interest (it hasn't), Eyman would have to make such payments for more than 45 years to pay $5.5 million. Eyman is 60 and thus, even if the court could make such an unrealistic and unsupported assumption about his future income in his senior years, Eyman is unlikely to live even half that long. *See* CDC National Center for Health Statistics (average life expectancy for U.S. males is 75.8

years).[1] And of course, the record establishes that those monthly payments were unsustainable, because Eyman ran out of money by September 2021. CP 741.

The lower court also opaquely noted that his other "financial circumstances" supported its legal conclusion that he had an ability to pay under an excessive fines analysis. CP 846-47. The State relies on only four other "financial circumstances" during Nov 2020 through February 2021, specifically: (1) Eyman's $81,105 bank account balance (most of which was from a car accident settlement); (2) $7,501 in his legal defense account; (3) that he was paying his living expenses of around $3,500 per month during that time; and (4) that he was averaging $25,000 in "gifts and donations" during the trial, which the State calls "income" and "evidence of earning capacity." State Br. 40-41. Even setting aside the State's omissions, its argument is legally and mathematically erroneous.

[1] https://www.cdc.gov/nchs/fastats/life-expectancy.htm.

First, it cites no legal principle—and none exists—allowing courts to treat temporary charity as if it were a stable wage. It is unreasonable to suppose that charitable donations during the height of interest in this case would continue in perpetuity with any degree of consistency. It punishes Eyman and, indirectly, his donors, because accounting for that charity enables imposition of a larger fine. Treating donations for legal defense as a basis for increasing punishment also burdens the "fundamental right" to "obtain meaningful access to the courts" through "collective activity." *See United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585-86, 91 S. Ct. 1076, 28 L. Ed. 2d 339 (1971) (describing the right).

Second, the savings and legal defense balances in Eyman's accounts during the trial were insufficient to cover even the pre-trial sanctions, let alone the fines and fees. CP at 340. Even if Eyman hypothetically could have sustained such charity, $25,000 per month is far less than the monthly accruing interest of almost $60,000. This ignores the Excessive Fines Clause's

requirement that the fine must avoid imposing financial ruin. *See Long*, 198 Wn.2d at 174.

Eyman still needed money to pay his own counsel and something to live on. The State cites that Eyman was able to keep up with his modest living expenses before the judgment. *See* State Br. 14, 16-17 (noting Eyman spent $3,537 per month on rent, utilities, child support, food, and other expenses for October 2020 through January 2021); *id.* at 41. But the State's suggestion that he could live comfortably on that long-term is unrealistic, as it amounts to roughly $40,000 per year—below the level widely recognized as needed to cover living costs in the area. *See, e.g.*, KOMO News, *Single Seattle residents need to make $135K to live comfortably, 6th most in U.S.* (Nov. 20, 2025).[2] To the extent the State's point is relevant at all, it only illustrates that Eyman was living modestly so he could continue making payments to

[2] https://tinyurl.com/2ycd3xaa.

the State and his own lawyers. He simply lacked the means to continue making payments long-term.

2. The temporarily lower interest rate was destined to expire when Eyman inevitably ran out of money

Because the State cannot rebut Eyman's inability to even keep up with the 12% interest, let alone pay the debt, the State urges the Court to ignore it, because for the first few months, the interest rate was only 0.06%. State Br. 15. This is a red herring. That rate did not govern the judgment as entered; the trial court's April 2021 judgment accrued post-judgment interest at Washington's statutory 12% rate. CP 48. The 0.06% rate only arises from Eyman's separate bankruptcy plan, which conditionally limited interest so long as he continued making large monthly payments of $10,000 (later increasing to $13,500). CP 473-74. But that conditional interim rate is irrelevant to Eyman's ability to pay on remand because it expired the moment Eyman inevitably could not sustain those payments and defaulted in September 2021, at which point the interest rate returned to 12%. CP 474, 495-500. Moreover, the bankruptcy

payment plan demonstrates the only way Eyman could pay the much smaller sanctions owed before the judgment, was through a court-supervised program with an artificially suppressed interest rate. Thus, the bankruptcy plan is evidence that these much larger fines exceeded Eyman's ability to pay.

The State claims ignorance about why Eyman stopped paying $10,000 per month, despite acknowledging his explanation that he "ran out of money." State Br. 43-44. Given the State's participation in the bankruptcy and complete access to Eyman's financial records and evidentiary submissions, it was certainly aware that Eyman lacked sufficient assets and income to continue making payments. CP 775-838 (extensive financial records produced by Eyman in 2023). The State also ignores that Eyman had to pay his own attorneys—he's already paid $1,353,868 and still owes more. Opening Br. 15.

3. Eyman's 2018 assets cut against the State's position

Instead of acknowledging these obvious factors, the State cites Appellant's 2018 net worth, which amounted to only 20%

of the $5,503,169 penalty imposed on him—grossly insufficient to satisfy the debt. Even if all Eyman's earthly possessions had been liquidated in 2018 and saved for the State upon judgment, he would have still owed the State approximately $4,400,000 in fines and fees, and that does not include the remaining sanctions or his own attorney fees. Interest on that remaining penalty would accrue at roughly $528,000 per year—$44,000 per month. Thus, to the extent that his 2018 assets bear any relevance to his ability to pay now (or at the time of the trial), it cuts against the State's position.

In any event, Eyman's 2018 assets are a poor metric, because they fail to reflect the following three years of crippling legal expenses, divorce, and bankruptcy, which reduced those assets to a small fraction by February 2021. CP 310-14. Indeed, the obstacles during that time became so severe that, for nine months, Eyman was unrepresented in the trial court, even begging the court to enter a default judgment against him. CP 312 ("After [my attorney] withdrew, I was unrepresented …

[o]verwhelmed by the enormity of being forced to represent myself in such a complex case … I filed a notice of intent to default."); CP 508 (2019 deposition testimony). The State fought that motion and now disregards that hardship and even faults him for continuing the litigation. State Br. 37.

D. The lower court erred in refusing to consider the judgment's impact on Eyman's ability to earn a living

The lower court also erred by failing to consider the stigma and constraints imposed by the judgment and injunction on Eyman's ability to earn a living, as well as his mortality. Eyman is 60—nearing the average retirement age in the U.S.—leaving him limited time to pay the State. *See* Trina Paul, *The Hidden Risks of Planning Retirement Around Longer Work Years for Your Health and Job Security*, Yahoo! Finance[3] (Jan. 16, 2026) (average retirement age is "64.6 and 62.6 for men and women, respectively," earlier than most people plan, with health and job loss being primary causes).

[3] https://finance.yahoo.com/news/hidden-risks-planning-retirement-around-101700060.html.

Despite these headwinds, the State claims Eyman's earning potential is sufficient to pay the fines and fees. State Br. 46-49. It argues that Eyman should "solicit charitable donations for himself" to pay the now roughly $9 million in fines and fees, pointing to Eyman's fundraising to support his legal defense during the trial as a model for soliciting donations to pay the penalty. State Br. 44, 46. At the same time, the State insinuates that perhaps these charitable gifts, too, were "political contributions" that may run afoul of the FCPA. State Br. 41-42. This proves Eyman's point that even asking for charity puts him at risk of continued allegations or even prosecution by the State. *See* State Br. 48.[4]

[4] The State incorrectly claims Appellant construes the statute and injunction as making "all future payment to him … illegal." State Br. 48. But Appellant argues only that those provisions are so ambiguous and undefined that asking for "any charity … [is] fraught with the risk that the state might claim it 'indirectly' supports" Eyman's "political work" (a term undefined by the FCPA) and therefore violates the injunction and the statute. Opening Br. 40-41. His position is even more precarious because

The State's argument, taken to its logical conclusion, would eviscerate the ability-to-pay analysis altogether. Under its reasoning, virtually any fine—no matter how severely it impacts a person's livelihood—would be constitutionally permissible so long as a defendant could, in theory, seek charitable donations. But constitutional limits on punitive fines cannot depend on the uncertain willingness of others to subsidize the State's punishment. This also undermines the State's assertion that the fine is appropriate and justified. If the penalty were truly fair, donors would have little reason to sacrifice their own limited resources to help pay it. The State offers no evidence to support its assumption that a donation campaign for this purpose could succeed.

The State also claims that 60-year-old Eyman can "continue his career [running campaigns]," State Br. 46, by

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the court used the present tense in stating Eyman "is a 'continuing political committee.'" *Id.* at 64.

forming a committee "for the sole purpose of receiving and spending contributions for officer compensation for promoting initiatives" and authorizing it to pay him a salary as an officer. State Br. 48-49. Yet the injunction prohibits Eyman from having "any financial decision-making authority for any political committee" or *authorizing* any committee expenditures whatsoever. CP 45 ¶¶ 6-8; Opening Br. 60-61. Thus, even if Eyman could form such a committee and find a treasurer willing to work with him, Eyman cannot decide to pay himself anything nor can he authorize payment to himself or a treasurer. *Id.* He is entirely reliant on others' willingness to risk accidentally violating the injunction that seven qualified treasurers believe is impossible to comply with. *See* Opening Br. 16; CP 309-10, 316-27 (letters from experienced treasurers noting the impossibility, with one stating that "I don't see how I, or anyone else serving as Treasurer for your PAC, could possibly comply with the Court's requirements"). The State belittles those qualified treasurers as "misapprehend[ing]" the judgment. State Br. 49.

Yet the State's unsupportable alternative interpretation offers Eyman no shelter from the injunction's restrictions, nor does it provide him with a Treasurer willing to work with him.

E. Eyman's inability to pay outweighs all other excessiveness factors

The State asks the Court to ignore the lower court's deficiencies based on the other factors considered in an excessive fines analysis: the nature and extent of the offense, whether it was related to other illegal activities, maximum penalty for the violation, and extent of the harm caused. State Br. 33. But the inability to pay traditionally limited the fine regardless of the other factors. Opening Br. 29-31. Indeed, an inability to pay "can outweigh all other factors" in an excessive fines analysis and cannot be ignored simply because the statute permits higher penalties. *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 723, 497 P.3d 871 (2021). The State tries to distinguish *Jacobo*, asserting that Eyman's reporting offenses are more serious than Jacobo Hernandez's felony. State Br. 31. Hernandez used his vehicle to hide and sell life-ruining and often deadly

methamphetamine. *Jacobo*, 19 Wn. App. 2d at 721. Jacobo was sentenced to two years in prison, but he could have been sentenced to *lifetime imprisonment* for the offense and fined up to $10 million. By contrast, Eyman's offense was civil, subject only to fines, the sole harm was a delay in information, and the total possible fine was $5.7 million. *See* CP 40; *State v. Eyman* (*Eyman I*), 24 Wn. App. 2d 795, 849, 521 P.3d 265 (2022). Moreover, unlike in *Jacobo*, it was "ambiguous" whether the statute regulated most of Eyman's conduct, meaning that, until the prior panel's decision in this case, reasonable minds could differ about whether it applied to most of his conduct at all. *Eyman I*, 24 Wn. App. 2d at 837, 839, 841. If the ability to pay outweighed all other factors in *Jacobo*, and it did, then it should here as well where the fine far exceeds the loss of a car and would leave Eyman permanently indebted by now roughly $9 million and growing.

The fine is unconstitutionally excessive and should be reduced accordingly. Under any reasonable analysis, a fine that

permanently prevents an individual from ever emerging from debt and bears no relationship to actual financial capacity is grossly disproportionate.

II. The Millions in Attorney Fees and Costs Are Punitive and Subject to the Excessive Fines Clauses

A. The Court should decide whether attorney fees are "fines" under the Excessive Fines Clause

Contrary to the State's argument, RAP 2.5(c)(2) requires only that a party request that the court "review the propriety of an earlier decision of the appellate court in the same case" and that "justice would be best served" by that review. The two most common reasons why courts reconsider a prior panel decision—an intervening change in law or a clearly erroneous decision—both apply here. *See Roberson v. Perez*, 156 Wn.2d 33, 42, 123 P.3d 844 (2005) (listing these as "*at least* two" reasons supporting RAP 2.5(c)(2)) (emphasis added).

The prior panel's decision regarding attorney fees and costs was clearly erroneous for two reasons. Opening Br. 43-46. First, the panel based its decision largely on the incorrect

assumption that penalties under the FCPA are *solely* in RCW 42.17A.750, even though the same statute that imposes attorney fees also provides for "*punitive* damages." RCW 42.17A.780 (emphasis added). This is apparent on the face of the statute, *see* Opening Br. 44-45, yet the State offers no response to that point. Second, the panel's decision ignored *Long*'s rule that the government's costs are subject to the Excessive Fines Clause where they arise from the government enforcing a punitive rule. 198 Wn.2d at 164. The State's attempts to distinguish *Long* fail, as explained further below.

Moreover, after Eyman filed his Opening Brief on October 24, 2025, the Washington Supreme Court issued a new excessive fines decision, construing both the state and federal excessive fines clauses and confirming that "fees" are subject to the clauses "if they are at least partially punitive." *Ellis*, 579 P.3d at 45. This new decision is yet another reason for this Court to revisit the prior panel's decision regarding whether attorney fees are subject to the excessive fines clauses. *See Roberson*, 156 Wn.2d at 42-

43 (intervening precedent "compelled the dismissal of Petitioners' claim" and thus exception to the law of the case doctrine was appropriate).

B. *Long* and *Ellis* confirm that fees and costs arising from enforcement of a punitive rule are subject to the excessive fines clauses

The State avers that *Long* did not apply the excessive fines clauses to costs and fees. State Br. 55-56. This is plainly wrong. *Long* held that the clauses apply to impoundment "costs" even though "the city was harmed when it paid the costs of towing and impoundment." *Long*, 198 Wn.2d at 174. *Long* also explained that even a "rough equivalence" of a forfeiture with "the amount spent on prosecution *may not … insulate a forfeiture from a finding that the forfeiture is 'excessive*.' Reimbursement is but one factor courts may consider in a proportionality inquiry." *Id.* at 136, 174 (internal quote omitted) (emphasis in original). In other words, the costs of prosecution are within the ambit of the excessive fines clause and may even be unconstitutionally

excessive where they are "roughly equivalent" to the cost of prosecution. *Id.*

As *Long* demonstrates, attorney fees and costs of prosecution here are "fines" because they arise from enforcing the punitive fines in the FCPA. *Long*, 198 Wn.2d at 164. Attorney fees that *exceed* the State's actual costs, like those here, are even more blatantly punitive. Opening Br. 47-48. The State attempts to distinguish the impoundment costs in *Long* as arising from a punitive impoundment, whereas the attorney fees and costs here arose from "time and money expended on the case" enforcing the FCPA against Eyman. *See* State Br. 56-57. This is a distinction without a difference. Impoundment costs arise from "time and money expended on" enforcing a punitive law. The costs and fees arising from the State enforcing the punitive provisions of the FCPA are no different. With 12% interest, the attorney-fee award now approaches $5 million—a severe financial sanction that dwarfs the fine itself.

The State cites the Washington Supreme Court's recent decision in *State v. Ellis*. State Br. 58-60. But *Ellis* provides compelling, intervening support for Eyman. *Ellis* expressly states that "fees" are subject to the Excessive Fines Clause "'if they are at least partially punitive.'" *Id.* (quoting *Long*, 198 Wn.2d at 161). Indeed, even restitution can be subject to the Excessive Fines Clause, because "[r]estitution can be both punitive and compensatory." *Id.* For restitution to evade the defense of the Excessive Fines Clause, it must "*solely* recompense[] those who suffered injury." *Id. Ellis* involved a murderer who was required to pay the actual funeral expenses of the person he murdered ($7,097.32) to reimburse crime victims—not the State. *Id.* at 45. Because the moderate restitution order was limited to the actual costs of the victim's funeral, it was not punitive. *Id.* But notably, *Ellis* confirmed that the Washington and Federal Excessive Fines Clauses extend to the State's fees and costs just as Appellant's Opening Brief explained at 48-51.

Still, the State wrongly likens the almost $5 million in attorney fees, costs, and interest to the restitution in *Ellis*. State Br. 57-59. But the State is not a victim entitled to recompense for something like funeral expenses. Eyman's reporting violations did not rob the State or vandalize its property. Rather, the State chose to relentlessly pursue and enforce the punitive provisions of the FCPA against Eyman. And the State isn't pursuing its actual costs; it seeks "prevailing market rates." State Br. 63-64. The State argues this is irrelevant because "attorneys' rates are never based on salary alone" in standard legal cases. State Br. 63. But the State effectively concedes that it is seeking more than actual costs, making it that much more apparent that the fees are "fines" by another name. *See also Paroline v. United States*, 572 U.S. 434, 455-56, 134 S. Ct. 1710, 188 L. Ed. 2d 714 (2014) ("severe" restitution implicates the Excessive Fines Clause even when it is primarily remedial).

The State's other authorities are unavailing. State Br. 60-61. For example, it cites a maritime law tort case between private

parties that had no constitutional claims and that had to interpret federal cases capping punitive damages. State Br. 60 (citing *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 73, 272 P.3d 827 (2012). Unlike payments for torts between private parties, the Excessive Fines Clause applies when it "constitutes payment to a sovereign as punishment for some offense." *Austin*, 509 U.S. at 622 (cleaned up). The State now seeks such a payment to itself as punishment for reporting violations under the FCPA. That figure is subject to the Excessive Fines Clause under *Austin*, *Long*, and *Ellis*.

C. The Second Judgment is also subject to an excessive fines review

The State suggests Eyman insufficiently argued that the newest attorney fees added in the second judgment are excessive, although he expressly challenged that judgment and included it in his challenge to the total attorney fees due. *See* State Br. 64-66. The Excessive Fines Clause applies to any punitive financial sanction, and there is no constitutional distinction between the State's initial fee award and those added later in the Second

Judgment. Rather, the award added in the Second Judgment merely increases the excessiveness of the fines and fees imposed against Eyman. Eyman expressly challenged the anticipated fees and costs added via the second judgment as unconstitutionally excessive within his second motion on remand and in the Opening Brief here. *See, e.g.,* CP 334, 340 (itemizing and requesting cancellation of all fees and costs as excessive); Opening Br. 13-14, 51. He is not quibbling over the reasonableness of the State's hourly rates or total time, as any such meager reductions would be meaningless since he can't come even close to paying the fees. He has had no income for years and has lost almost everything. The added fees and costs are unconstitutionally excessive because of Eyman's inability to pay.

III. Because the Injunction Exceeds the Authority of the FCPA, It Should Be Struck

Tellingly, the State does not defend the injunction's terms as falling within the FCPA's authority. *See* State Br. 66-72. It does not because it cannot. The injunction goes well beyond

simply "preventing violations," instead imposing restrictions for the rest of Eyman's life that violate the limits imposed under the FCPA. Examples include:

- Requiring reporting of personal gifts unrelated to campaigns;
- Regulating undefined "political work";
- Barring him from *any* financial role in any committee though the FCPA imposes no qualification requirements for such decision-making;
- Regulating vendor solicitation outside campaign-finance disclosure.

Opening Br. 57-63. As *Eyman I* explained, an injunction imposed under the FCPA must prohibit conduct that would violate the FCPA or compel conduct the FCPA requires. 24 Wn. App. 2d at 845-46. The injunction does neither. The Court should hold the State to the limits of the law and end the ongoing violation of the FCPA.

The State argues only that because Appellant did not persuade the prior panel to reach his argument about the rest of the injunction, he is barred from ever raising it again. RAP 2.5(c)(2) and RCW 7.40.180 reject that rigidity. The prior panel acknowledged that Eyman had sufficiently raised his challenge to part of the injunction. Even though he expressly repeated his challenge to the other portions of the injunction, Opening Br. 53-54, the panel "decline[d]" to decide the issue on the merits. *Eyman I*, 24 Wn. App. 2d at 846 n.7. This is a manifest injustice and clearly erroneous, Opening Br. 55-56, particularly because preventative injunctions are an "extraordinary remedy" that should be "used sparingly." *Kucera v. State*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). Trial courts inherently retain power to later modify or vacate an injunction because permanent injunctions are "fundamentally different from any other judgment." *State ex rel. Bradford v. Stubblefield*, 36 Wn.2d 664, 675, 220 P.2d 305 (1950).

Moreover, RCW 7.40.180 expressly permits Eyman to challenge an ongoing injunction "*at any time*," by motion, just as he did in his motion on remand. Opening Br. 52; CP 346-53. The State argues Eyman should have brought the argument in a separate motion, suggesting the form of the motion was insufficient, although RCW 7.40.180 makes no such demand. But even if the State were right, courts regularly hold that "substantial compliance with procedural rules is sufficient, because delay and even the loss of lawsuits []should not be[] occasioned by unnecessarily complex and vagrant procedural technicalities." *Matter of Saltis*, 94 Wn.2d 889, 895-96, 621 P.2d 716 (1980) (internal quote omitted). Eyman's compliance was adequate.

For these reasons, the injunction cannot stand. The FCPA authorizes injunctive relief only to prohibit conduct the Act itself forbids or to compel conduct the Act requires. The injunction violates that command, permanently subjecting Eyman to its demanding and chilling commands. The Court should reconsider

and end the ongoing violation of the FCPA caused by the injunction.

CONCLUSION

The Court should eliminate or reduce the fines and fees because they are unconstitutionally excessive, as Eyman is unable to pay them. The Court should also strike the terms of the injunction because they exceed the scope of the FCPA.

RAP 18.17(b) CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the rules of this Court and contains 5,992 words.

DATED: February 19, 2026.

Respectfully submitted,

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DECLARATION OF ELECTRONIC SERVICE

The undersigned declares that all parties' counsel will receive electronic notice of the filing of this document at the Washington State Appellate Courts' Portal.

DATED: February 19, 2026.

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