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 OPENING BRIEF

Christina M. Martin
WSBA # 60377
Pacific Legal Foundation
1425 Broadway # 429
Seattle, WA 98122
Telephone: (425) 576-0484
CMartin@pacificlegal.org

Johanna Talcott
Florida Bar # 1008094
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Telephone: (561) 691-5000
JoTalcott@pacificlegal.org

Attorneys for Defendant-Appellant Tim Eyman

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INTRODUCTION

Tim Eyman spent roughly twenty years challenging state government with ballot initiatives that limited its power. While his efforts drew opprobrium from political leaders and the media, Eyman enjoyed support from citizens across the state. The State of Washington hobbled Eyman's activism on April 16, 2021, when it obtained a judgment against him in the Thurston County Superior Court for civil violations of campaign reporting rules under the Fair Campaign Practices Act ("FCPA"). The court imposed an injunction broadly restricting Eyman's ability to continue his career running political campaigns, imposed a $2.6 million fine, and ordered him to pay $2.8 million in attorney fees and $96,486 in costs. Clerk's Papers ("CP") at 47. These amounts also accrued 12% post-judgment interest. CP at 48. At the time, Eyman's net worth was millions of dollars less than the total judgment. CP at 311–13. The burden of the judgment, his own attorney fees, and the damage to his career and income forced the liquidation of his estate in bankruptcy. CP at 311–12. He lost his

home, his career, and his savings. *Id.* Eyman additionally paid $385,425 in pretrial fines and fees to the State for discovery sanctions and $477,040 in post-judgment payments from the bankruptcy estate to the State. CP at 340.

On appeal, Eyman succeeded in getting some parts of the injunction overturned and the case remanded for consideration of whether the fines were excessive in light of Eyman's inability to pay. *State v. Eyman*, 24 Wn. App. 2d 795, 807, 521 P.3d 265, 267–67 (2022) ("*Eyman I*"). Despite clear evidence of Eyman's present indigence and his limited means at the time of judgment in 2021, the trial court nevertheless concluded that he had "an ability to pay" and therefore the fines were not excessive. CP at 847. The trial judge declined to consider his inability to pay at the time of the judgment on remand; it would only consider his finances from November 2020 to January 2021, long before the judgment against Eyman stigmatized him, before his appellate costs, and before the injunction barred him from continuing his career or even soliciting charitable donations for himself that

could indirectly support his campaign work. *Id.* The trial court relied on the fact that Eyman had been paying $10,000 per month on sanctions, fees, and costs in this case between November 2020 through January 2021, as well as unenumerated "remaining details regarding Eyman's financial circumstances" during that time frame. *Id.*

The trial court's ruling departs from centuries of precedent that forbid such ruinous fines. The record established that Eyman could not pay the fines and fees when imposed in 2021 and cannot pay them now. There is no reason to believe Eyman will ever be able to pay the fine and the attorney fee award—now surpassing $8 million with interest. Although this Court previously held that the attorney fees are not subject to excessive-fines review, reconsideration under RAP 2.5(c) is warranted. The trial court's decision was clearly erroneous and unjust in light of the Washington Supreme Court's decision in *City of Seattle v. Long*, which held that costs arising from enforcement of a law are at least partially punitive and therefore subject to the federal

and state constitutional provisions prohibiting excessive fines. 198 Wn.2d 136, 493 P.3d 94 (2021). The attorney fees here stem directly from an enforcement action against Eyman to obtain punitive fines and substantially exceed his ability to pay.

Lastly, the Court should also overturn or clarify the injunction imposed against Eyman. This Court previously held that two portions of the injunction must be reversed because they exceeded the authority of the FCPA. But the Court refused to even consider Eyman's arguments that the rest of the injunction likewise exceeded the authority of the FCPA, holding they weren't sufficiently "meaningful" to warrant discussion. On remand, Eyman moved to dissolve or revise the injunction, consistent with RCW 7.40.180. The trial court held it was bound by this Court's decision. The Court should reverse on appeal or alternatively reconsider his arguments pursuant to Rule 2.5(c).

Assignment of Errors

A. Errors Assigned

1. The trial court erred when it entered its Order on Hearing for Remand of June 13, 2025, incorporating the court's Ruling on Remand of May 22, 2025, denying Eyman any relief from excessive fines and attorney fees.
2. The trial court erred when it denied Eyman's motion to revise or dissolve the injunction, holding as a matter of law that it lacked authority to revise it beyond what this Court already held was unauthorized by the FCPA. *See* CP at 900-02 (Transcribed Order of February 28, 2025 (attached to the Sipe Declaration of June 5, 2025, as Exhibit G)).
3. The trial court erred when it entered its Second Judgment against Eyman on June 13, 2025, which imposed additional unconstitutionally excessive punishment in the form of attorney fees and costs on appeal and remand.
4. The Court of Appeals is asked to reconsider, pursuant to RAP 2.5(c)(2), its holding that the millions of dollars of

attorney fees and costs imposed on Eyman are not subject to the excessive fines clauses as a matter of law.

5. The Court of Appeals is asked to reconsider, pursuant to RAP 2.5(c)(2), its refusal in the prior appeal to consider vacation of the remaining provisions of the injunction on the grounds that Eyman did not adequately argue that they exceed the limits of the FCPA.

B. Issues Pertaining to the Assignment of Errors

1. Are the fines unconstitutionally excessive in light of Eyman's limited and rapidly shrinking means in 2021 and his current indigency and inability to pay them? (Assignments of Error 1 & 3).

2. Do the attorney fees and costs imposed in this enforcement action function as punitive fines subject to the excessive fines clauses? (Assignment of Error 1, 3 & 4).

3. Are the attorney fees and costs unconstitutionally excessive given Eyman's inability to pay them? (Assignment of Error 1, 3 & 4).

4. Did the trial court err in holding that it lacks authority to revise the injunction further? (Assignment of Error 2).
5. Should the Court of Appeals reconsider its prior decision that declined to consider Eyman's arguments that the remainder of the injunction also exceeded the authority of the FCPA? (Assignment of Error 5).
6. Does the injunction exceed the legal limits of the FCPA? (Assignment of Error 2 & 5).

STATEMENT OF THE CASE

A. The original trial court decision and first appeal

In 2017, the State filed this action against Tim Eyman and Eyman's LLC, Watchdog for Taxpayers, LLC, under Washington State's Fair Campaign Practices Act. *Eyman I*, 24 Wn. App. 2d at 807. The State alleged that Eyman failed to fully disclose contributions and expenditures related to various initiative efforts he was involved with between 2012 and 2017. *Id.*

In the course of litigation, the trial court imposed sanctions on Eyman for failing to adequately satisfy extensive discovery requests from the government. CP at 255–56. Those sanctions (including the State's attorney fees and costs) reached $385,425.76 and he began making payments toward them while the litigation continued. CP at 313.

After a bench trial, the judge held that Eyman had repeatedly violated the FCPA's disclosure requirements between 2012 and 2017 and imposed a $2.6 million fine, $2.8 million in attorney fees, and $96,486 in costs. CP at 47. These amounts were all subject to 12% post-judgment interest. CP at 48.

Eyman appealed, arguing that his activities did not violate the reporting requirements of the Act, the trial court had misconstrued the statute, that Washington's enforcement violated the First Amendment, the fines were unconstitutionally excessive under the Eighth Amendment, and the injunction was unlawful. This Court overturned a few aspects of the trial court's decision, including parts of the injunction. *Eyman I*, 24 Wn. App.

2d at 845–46. Although the Court held the statute is "ambiguous" about whether it would apply to Eyman's activities, the Court "liberally construed" it against him to "promote complete disclosure of all information respecting the financing of political campaigns and lobbying." *Id.* at 817, 837–40. For example, the largest possible fine arose from Eyman receiving personal donations for personal expenses that the Court held "indirect[ly]" supported Eyman's longtime involvement in a variety of initiative campaigns. *Id.* at 833, 838–40. Thus, the Court upheld the superior court's holding that Eyman was *personally* a continuing political committee during the relevant time frame and therefore should have registered as one and reported such personal donations. *Id.* at 840–42. Following this pattern of finding ambiguities and construing them against Eyman, the Court upheld the trial court's judgment regarding most of the reporting violations under the statute. *See id.* at 819–22, 826, 828–29.

The trial court imposed a total penalty of $2,601,502 for the above violations. *Id.* at 813. This Court affirmed the trial court's holding that the first four excessive fines factors weighed in favor of the proportionality of the fine: (1) the nature and extent of the misconduct, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused. *Id.* at 848–49.[1]

But this Court held that the excessive fines analysis was incomplete because the trial court failed to consider whether Eyman could pay the fines. *Id.* at 849. Accordingly, it remanded the case "to take evidence regarding Eyman's ability to pay and to adjust the penalty if necessary to comply with the excessive fines clause." *Id.* at 849–50.

[1] The Court reached this decision even though the total financial penalty for the failures to report here is far worse than those imposed on many serious criminal offenders, including rapists, murderers, and robbers. *See* RCW 9.94A.550 (up to $50,000 for class A felony); RCW 10.01.100 (up to $1 million for corporations convicted of class A felonies).

Regarding the $2.8 million in attorney fees imposed by the trial court, this Court determined that they were not a "fine" within the protection of the Excessive Fines Clause. *Id.* at 848.

Eyman sought review by the Washington Supreme Court but was denied.

B. On remand

After this Court issued its order, while Eyman sought review by the Washington Supreme Court, *see* CP at 869, the State initiated new, voluminous discovery requests from Eyman, including 20 pages of interrogatories and 18 multipart requests for production. CP at 775–838. The interrogatories and requests for production required disclosure of virtually every financial transaction since February 10, 2021 (the date the original Findings by the trial court were entered) through March 2023 and all initiatives sponsored. They required Eyman to disclose all payments for legal services and/or amounts owed to law firms, businesses in which he held an interest, bank accounts, credit and debit cards used with every transaction, legal defense fund

accounts, electronic and mobile payment systems used with every transaction, online fundraising services used with every transaction, all funds received for any reason (including from family), all funds held anywhere, all property, assets or investments, all expenses for fundraising, any debts owed to Eyman, his monthly expenses for housing, all expenses for gas and eating out, all insurance policies, premiums paid and source of payments, all travel outside the state, cost and source of funds, all consumer debt, all bank records, credit card statements, fundraising and fundraising expenses, communications and solicitations, all receipts for anything including meals or lodging, and more. *Id.* The interrogatory answers, provided in March 2023 (without objection from the State) included 26 exhibits totaling over 700 pages of detailed financial records. *See* CP at 735, 842–45 (index of exhibits for those records).

Eyman was billed over $60,000 in attorney time to answer the interrogatories, a cost he was—then and now—unable to pay. CP at 744. And, because Eyman believed the burdensome

interrogatories were not authorized by CR 69, he objected. CP at 115–17, 122. The State argued that these requests were not pursuant to CR 69, but rather pursuant to a continuing—forever running—term of the expansive injunction issued by the trial court. CP at 134 ("[T]he Discovery Requests were served to monitor Eyman's compliance with reporting requirements under the injunction as expressly authorized by this Court."). Despite his lack of means to pay even his own counsel, CP at 308, 744, the trial court imposed an additional $25,187 in sanctions. CP at 141–42.

Thus, as of January 2025, the fines and attorney fees Eyman owed to the State, including 12% interest, had ballooned to more than $8 million. CP at 308–11, 328–32, 340, 911. Roughly half of that amount is from the fine plus interest, and the other half is for attorney fees plus interest. *See id.* This amount includes the $2,601,502 penalty judgment, $2,801,667 attorney fees, and $96,486 in costs awarded to the State on April 16, 2021; $660,000 *per year* interest on that judgment at a

rate of 12%; an additional $302,299 in appellate costs and attorney fees, plus interest on that amount at a rate of 12% (beginning June 13, 2025)—$36,275 per year; $25,187 in sanctions for objecting to the State's post-trial interrogatories, plus $3,022 per year interest on that amount. CP at 47, 308–11, 328–32, 340. The interest on the debt alone is now around $700,000 per year—over $58,000 per month. *Id.*

On January 23, 2025, Eyman submitted a Motion on Remand asking the trial court to hold that the fines were unconstitutionally excessive in light of his inability to pay and that the attorney fees and costs were at least partially punitive and therefore should also be found unconstitutionally excessive in light of Eyman's inability to pay. CP at 333–53. Eyman also asked the court to amend the injunction to comply with the FCPA and Constitution. CP at 346–53.

1. Evidence regarding Eyman's inability to pay

On January 3, 2025, Eyman submitted a declaration and exhibits showing that his only valuable assets were a 2013 Ford

Explorer and less than $12,000 in savings and legal defense funds, having exhausted all of his personal and professional resources fighting the charges against him and making payments on the fines. CP at 308–13. He had already paid over $1,353,868 to his own lawyers over the last 12 years of investigation and litigation by the State and $862,465 to the State, comprising $385,425 in pre-trial fines and fees to the State (for discovery sanctions), and $477,040 post-judgment payments from the bankruptcy estate to the State. CP at 310–14, 340. These amounts are not enough to even keep up with the interest on the principal. CP at 310–14.

The injunction issued by the trial court forbids Eyman from continuing his longtime career running political committees. CP at 308–09. The court determined that Eyman was *personally* a continuing political committee, and the court's injunction bars him from having "any financial decision-making authority for any political committee," so he could not actually establish a continuing political committee for himself. CP at

309–10. Nor could Eyman hire a treasurer to perform those duties. He inquired with numerous professionals qualified to serve as PAC treasurers, all of whom rejected his requests on the grounds that they could not serve in that capacity and lawfully comply with the Court's injunction and the law. CP at 309–10, 316–27. Accordingly, Eyman had no income. CP at 309.

On remand, the State did not dispute Eyman's current indigency, instead arguing that the only relevant time for the excessive fines analysis was Eyman's financial status when the original trial court order was entered in February 2021. CP at 393, 697–99. The State further argued that Eyman's "own post-judgment actions"—specifically, his efforts to appeal the judgment and reduce the fines—"result[ed] in additional court sanctions and attorney fee awards to the state" and are irrelevant to Eyman's ability to pay. *Id.* at 698–99.

The State offered exhibits demonstrating that although he had no income at that time, he had received $124,586 in gifts between October 2020 and February 2021. CP at 400. In

February 2021, he also received a $54,649 personal injury settlement from a car accident,[2] as well as $15,899 in "donations from friends to [his] legal defense fund." CP at 401–02. The State also argued that the court should consider Eyman's financial status at the time of his bankruptcy filing in November 2018—seven years ago and *three years before the 2021 judgment*—when Eyman still had $1.1 million in assets. CP at 386, 395, 399. The State noted Eyman's income of $237,481 in 2018. CP at 394.

On February 20, 2025, Eyman submitted another declaration attesting to his inability to pay the fines and fees imposed at the time of judgment in February 2021 and four years later, which was supported by exhibits of his 2019–2022 tax returns, his bankruptcy report, and his bank statements for February 2021 and December 2024. CP at 740, 746–53.

His declaration and tax returns covering 2019 through 2022 revealed negative income. CP at 741. Eyman's assets had

[2] CP at 424 (car accident resulting in "neck and back injury").

also shrunk significantly from 2018. In February 2021, Eyman had $81,105 in his account—the bulk of which came from a one-time personal injury settlement from a car accident. CP at 741. He had another $7,501 in his legal defense fund. *Id.* And he had $40,288 in the bankruptcy "pass through" account, which the bankruptcy trustee used to pay creditors. *See id.* As his declaration explains, Eyman continued to make payments of $10,000 per month to the State and he continued to pay his own attorneys until he ran out of money in September 2021. *Id.* Once out of money, the State had his bankruptcy converted to a Chapter 7 (insolvency) bankruptcy—resulting in the sale of his home and draining of his accounts to pay his bills. CP at 742. The bankruptcy did not shield him from the fines and fees imposed in this case. CP at 387, 743. *See also* 11 U.S.C. § 523(a)(7) (bankruptcy will not discharge fines imposed for the benefit of a governmental unit that are not compensation for "actual pecuniary loss").

2. Trial court's decisions on remand

On February 28, 2025, during the hearing on the Motion to Remand, the judge informed the parties that he would hold that the relevant period for the excessive fines decision would be February 2021, when the original findings were entered. CP at 895. At that hearing, the parties agreed that an oral evidentiary hearing was unnecessary, and the issue could be decided on the papers. CP at 896–97. The judge also ruled that as a matter of law, he could not amend the injunction that severely injures Eyman's ability to earn a living, beyond striking the provisions required by this Court's prior opinion. CP at 900–02.

On May 22, 2025, the trial court ruled that Eyman's current inability to pay was irrelevant to the excessive fines analysis. *See* CP at 846–47. The only question, according to the superior court, was whether Eyman could pay "when the original trial record was created—i.e., from November 2020, to January 2021." *Id.* Because "[t]he parties agreed that a formal evidentiary hearing was unnecessary," the court decided the question based

on "the declarations already in the file." CP at 846. The court concluded that because "Eyman made monthly payments on the penalties assessed by the Court from November 2020, to January 2021," these payments and other unenumerated "remaining details regarding Eyman's financial circumstances" at that time "demonstrate[d] an ability to pay under the excessive fines clause." CP at 847. Thus, the court held it was "not necessary to adjust the originally imposed penalty to comply with the excessive fines clause." *Id.*

The State then moved for entry of a second judgment that included additional attorney fees and that corrected the court's first judgment to comply with this Court's *Eyman I* decision. CP at 848. On June 13, 2025, the Court issued an order incorporating its May 22, 2025, order regarding the excessive fines clauses and revising the trial court's February 10, 2021, Findings of Fact and Conclusions of Law and injunction to comply with this Court's December 6, 2022, opinion. CP at 846–47. The Court also entered judgment ordering Eyman to pay $327,037 in appellate

attorney fees and costs and for a motion to compel filed. CP at 904–05.

Eyman timely filed a notice of appeal and a designation of clerk's papers. CP at 909–22.

SUMMARY OF ARGUMENT

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense." *United States v. Bajakajian*, 524 U.S. 321, 327–28, 118 S. Ct. 2028, 2033, 141 L. Ed. 2d 314, 325 (1998) (citation omitted). It prohibits fines that are "grossly disproportionate" to the offense. *Bajakajian*, 524 U.S. at 334. Whether a fine is grossly disproportionate turns largely on the offender's financial circumstances. *See Long*, 198 Wn.2d at 171; 4 William Blackstone, *Commentaries on the Laws of England* 379. Indeed, whether a party has an ability to pay "can outweigh all other factors" in an excessive fines analysis. *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 723, 497 P.3d 871, 579 (2021). And courts should not narrowly consider the

offender's financial position before judgment was entered and years before litigation exhausted the offender's resources. *See* Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 331–35 (2014), *cited in Long*, 198 Wn.2d at 161.

The fine here is unconstitutionally excessive because it far exceeds Eyman's ability to pay. He could not pay it in 2021 and cannot pay it now. CP at 308. Indeed, he cannot even keep up with the interest payments. *Id.* at 310. The trial court imposed $2,601,502 in penalties at 12% interest—accruing roughly $312,180 per year—so the debt now exceeds $4 million. *Id.* When the judgment was entered and while Eyman pursued appellate relief, his assets were quickly exhausted, as his bankruptcy confirmed. *Id.* at 312. Today, Eyman cannot pay even one month's interest on the debt, let alone the principal. *Id.* at 310. The fines are therefore unconstitutionally excessive.

Including interest, the court imposed $4 million in attorney fees in this case, an amount he also has no hope of ever paying. CP at 310. Although this Court previously held that the attorney

fees and courts costs are not "fines" within the meaning of the excessive fines clauses, this Court should reconsider under RAP 2.5(c), because it was clearly erroneous under *Long*, 198 Wn.2d at 164, and causes injustice to Eyman. *See Roberson v. Perez*, 156 Wn.2d 33, 42, 123 P.3d 844, 849 (2005) (describing application of RAP 2.5(c)(2)). In *Long*, the Washington Supreme Court held that the excessive fines clauses apply when the government seeks to recoup its costs in enforcing a punitive law. 198 Wn.2d at 164. Moreover, courts have long recognized that awarding attorney fees is somewhat punitive, because they are imposed at least partially for retributive or deterrent purposes. *See, e.g.*, *Walters v. A.A.A. Waterproofing, Inc.*, 151 Wn. App. 316, 324–25, 211 P.3d 454, 459 (2009) (imposing attorney fees "is an enormous deterrent"). Deterrence and retribution are markers of punishment. *See Austin v. United States*, 509 U.S. 602, 610–11, 622, 113 S. Ct. 2801, 2812, 125 L. Ed. 488, 505 (1993); *Bajakajian*, 524 U.S. at 329. The State's attorney fees and court costs are subject to an excessive fines analysis because

they arise from the punitive action of enforcing the FCPA's disclosure requirements and exceed a compensatory purpose. Those fees are also unconstitutionally excessive because they exceed Eyman's ability to pay.

The Court should also overturn or clarify the injunction imposed against Eyman. This Court previously held that two portions of the injunction must be reversed because they exceeded the authority of the FCPA but refused to address Eyman's argument that the rest of the injunction likewise exceeded the authority of the FCPA, holding the arguments weren't sufficiently meaningful to warrant discussion. *Eyman I*, 24 Wn. App. 2d at 845–46. The trial court had authority to revise or dissolve the injunction and it should have done so. *See* RCW 7.40.180. Even if that weren't so, this Court should reconsider Eyman's arguments pursuant to Rule 2.5(c). The injunction, which is forever running against Eyman and forces him to forever be subject to shockingly invasive reporting rules, exceeds the scope of the FCPA and therefore should be struck.

STANDARD OF REVIEW

Whether a fine is unconstitutionally excessive in light of a party's ability to pay is reviewed *de novo*. *Long*, 198 Wn.2d at 163; *State v. Grocery Mfrs. Ass'n*, 198 Wn.2d 888, 899, 502 P.3d 806, 812 (2022). *Cf. State v. Ramirez*, 191 Wn.2d 732, 740, 426 P.3d 714, 718 (2018) (failure to make adequate legal inquiry into whether party has ability to pay discretionary legal fees under statute subject to *de novo* review).

The meaning and scope of the FCPA is reviewed *de novo*. *Eyman I*, 24 Wn. App. 2d at 837.

ARGUMENT

I. The fines imposed on Eyman are unconstitutionally excessive because they grossly exceed his ability to pay the fines

The state and federal constitutions' excessive fines clauses prohibit excessive fines. *See* Wash. Const. art. I, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted."); U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel

and unusual punishments inflicted."). The Washington Constitution may offer more protection, but in most cases the clauses are coextensive and thus commonly discussed interchangeably. *See Long*, 198 Wn.2d at 159.

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Bajakajian*, 524 U.S. at 327–28 (citation omitted). The Clause prohibits fines that are "grossly disproportionate" to the offense. *Id.* at 328 To decide whether a fine is grossly disproportionate, courts first consider "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused." *Long*, 198 Wn.2d at 167 (internal quotes omitted).

After completing this preliminary analysis, courts must then consider the fined party's ability to pay. *Eyman I*, 24 Wn. App. 2d at 848; *Long*, 198 Wn.2d at 171; *see also Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S.

257, 300, 109 S. Ct. 2909, 2933–34, 106 L. Ed. 2d 219, 254 (1989) (O'Connor, J., concurring). Whether a party has an ability to pay "can outweigh all other factors" in an excessive fines analysis. *Jacobo Hernandez*, 19 Wn. App. 2d at 723 (citing *Long*, 198 Wn.2d at 168–69).

Here, the lower court erred by holding that because Eyman made $10,000 per month payments for the few months leading up to the 2021 entry of judgment in this case, and based on other unstated reasons, that Eyman could pay millions of dollars in fines and attorney fees. CP at 847. The evidence submitted overwhelmingly established that he could not pay when the judgment was entered and he still cannot pay now. CP at 308–15, 740–44. The State's exhibits likewise demonstrate Eyman's inability to pay at that time. CP at 404–64. This litigation and the resulting judgment against Eyman drove him from having a comfortable middle-class life to destitution. *See supra* at 14–18. Regardless of the period considered, history and precedent

counsel that the fines are unconstitutionally excessive in light of Eyman's inability to pay.

A. The Excessive Fines Clause requires fines to be reduced to something that may realistically be paid by the offender without driving the offender into destitution

The history and purpose of the Excessive Fines Clause underscore why the trial court erred in upholding the $2.6 million fine, which has ballooned to more than $4 million with the court-imposed 12% interest. CP at 310.

The Excessive Fines Clause traces its history "to at least 1215, when Magna Carta guaranteed that [a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement." *Timbs v. Indiana*, 586 U.S. 146, 151, 139 S. Ct. 682, 687–88, 203 L. Ed. 2d 11, 16 (2019) (internal quote omitted).[3] The provision "required that economic sanctions 'be proportioned to the wrong' and 'not be so large as to deprive an

[3] This rule pre-dated Magna Carta—dating to at least the reign of King Henry II (who died in 1189). Blackstone, *supra*, at 379.

offender of his livelihood.'" *Id.* (quoting *Browning-Ferris*, 492 U.S. at 271).

The protection meant simply that a fine should never be bigger than the fined party's "circumstances or personal estate will bear; saving to the landholder his *contenement*, or land; to the trader his merchandize; and to the countryman his *wainage*, or team, and instruments of husbandry." Blackstone, *supra*, at 379 (emphasis added). This meant that the fine was first set and then "reduced" to a level that would ensure "*salva sustentatione sua, et uxoris, et liberorum suorum*," *id.* at 379–80—*i.e.*, "saving his own sustenance and that of his wife and children." Thomas Taylor, *A Law Glossary of the Latin, Greek, Norman, French, and other Languages* 151 (1819). *See also Browning-Ferris*, 492 U.S. at 289 (O'Connor, J., concurring in part and dissenting in part) (After "the amount of an amercement was initially set by the court," "[a] group of the amerced party's peers would then be assembled to reduce the amercement in accordance with the party's ability to pay.").

The purpose of this protection was that "[i]n no case could the offender be pushed absolutely to the wall: his means of livelihood must be saved to him." William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 287 (2d ed. 1914); *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1322 (11th Cir. 2021) (Newsome, J., concurring) (quoting McKechnie). "This limitation applied regardless of the relationship between the fine and the gravity of the offense." *United States v. Levesque*, 546 F.3d 78, 83–85 (1st Cir. 2008).

"Despite Magna Carta, imposition of excessive fines persisted." *Timbs*, 586 U.S. at 152. Especially in the 17th century, kings "us[ed] large fines to raise revenue" or "harass their political foes." *Id.*; *Browning-Ferris*, 492 U.S. at 267 (The Excessive Fines Clause was adopted, in part, to "limit[] the ability of the sovereign to use . . . power to collect fines[] for improper ends."). Such ruinous fines helped lead to a ban on excessive fines in the English Bill of Rights of 1689. *Timbs*, 586

U.S. at 152. Under that protection, "it is never usual to assess a larger fine than a man is able to pay, without touching the implements of his livelihood." Blackstone, *supra*, at 387; *see also District of Columbia v. Heller*, 554 U.S. 570, 593–94, 128 S. Ct. 2783, 2838–39, 171 L. Ed. 637, 658 (2008) (Blackstone was "the preeminent authority on English law for the founding generation") (quotation omitted).

The excessive fines clauses in the Washington and U.S. constitutions derive from that history—even adopting similar language to the English Bill of Rights. *Timbs*, 586 U.S. at 152 (It provided: "excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted."). In light of this history, the Washington Supreme Court in *Long* recognized that courts must consider ability to pay in the excessive fines analysis. *Long*, 198 Wn.2d at 168 (looking to Magna Carta, Blackstone, and other historical sources in construing excessive fines clauses). As explained above, that same history demonstrates that the protection prohibits fining an

individual into complete ruin. The fine must be within the debtor's power to pay and cannot take all assets and sustenance from the individual, leaving the means to earn a living in place.

The fine here violates these longstanding rules. It is so large that Eyman could not have paid it in 2021, and he certainly cannot pay it now. CP at 310. Indeed, he cannot even keep up with the interest payments. Even without including the exorbitant and punitive attorney fees imposed on Eyman, he owes $2,611,502 subject to 12% interest—$312,180 per year. *Id.* The annual interest alone well exceeds Eyman's reported 2018 income of $237,481—a figure the State highlighted as an example of his "capacity to earn a *substantial* amount of income." CP at 394 (emphasis added). The current fine exceeds $4 million for a man who has virtually no income, has been enjoined out of his occupation, and whose total assets are insufficient to pay interest on the debt for even one month. CP at 310–15, 743.

B. The Excessive Fines Analysis requires consideration of Eyman's finances at the time the excessive fines analysis is completed

The trial court held that the *only relevant time period* for the excessive fines analysis was the few months leading up to the judgment against Eyman—November 2020 through January 2021. CP at 847. The court refused to consider how that judgment impacted Eyman's ability to earn a living. *Cf. City of Chicago v. Fulton*, 592 U.S. 154, 163–64, 141 S. Ct. 585, 592–94, 208 L. Ed. 2d 384, 392–93 (2021) (Sotomayor, J., concurring) (describing the vicious cycle of debt caused by an unpayable fine and ensuing loss of employment, which ultimately interferes with the debtor's ability to pay their creditor). And it refused to consider his current inability to pay. *See* CP at 847. The trial court's decision departs from the requirements of the excessive fines clauses.

When considering whether a fine exceeds the offender's ability to pay, courts must consider *all* relevant circumstances, including how litigation has impacted the debtor and how the

judgment impacts the future ability to earn a living. *See Long*, 198 Wn.2d at 171 ("The weight of history and the reasoning of the Supreme Court demonstrate that excessiveness concerns more than just an offense itself; it also includes consideration of an offender's circumstances."); *United States v. Busher*, 817 F.2d 1409, 1415 (9th Cir. 1987) ("[T]he eighth amendment . . . embodies fluid concepts that vary in application with the circumstances of each case.").

Relevant circumstances include the ability to pay at the time the government seeks payment. *Cf. State v. Blank*, 131 Wn.2d 230, 241–42, 930 P.2d 1213, 1220 (1997) (In equal protection and effective assistance of counsel cases, the court held, "[T]he relevant time is the point of collection and when sanctions are sought for nonpayment."). Indeed, in early America, "[a]n inability to pay and the effect on one's family were also treated as mitigating factors *at sentencing and upon later petition for relief*." Colgan, *supra*, at 331–35 (citing numerous historic cases and statutes reducing or cancelling fines

because it exceeded ability to pay). Courts were not limited to some narrow window for calculating whether a fine must be reduced or cancelled based on circumstances. *See id.*; *cf. Browning-Ferris*, 492 U.S. at 300 (O'Connor, J., concurring) (quoting Blackstone, *supra*, at 371) ("[T]he 'quantum, in particular, of pecuniary fines neither can, nor ought to be, ascertained by any invariable law. The value of money itself changes from a thousand causes; and at all events, what is ruin to one man's fortune, may be a matter of indifference to another's.'").

By contrast, here, the trial court held that the only relevant time was four to five years ago, CP at 846–87, before Eyman's few remaining assets were lost defending this case and securing the appellate judgment that required the trial court to consider his inability to pay. *See* CP at 308–14. Although Eyman had more assets when this case *started*, he exhausted all of his personal and professional resources fighting the charges against him and paying some of the judgment. CP at 310–14. He paid $862,465

to the State, plus over $1,353,868 to his own lawyers over the last 12 years of investigation and litigation by the State. *Id.* By the time the judgment was entered, he was already in bankruptcy, his assets had significantly dwindled, and he had no income because no one would hire or contract with him. CP at 741–42. At that time, he could not even keep up with the roughly $660,000 annual interest—over $55,000 per month—on the fines and fees. CP at 310. Moreover, the trial court's judgment and injunction prevented him from working in his occupation—leaving him destitute with no realistic possibility of covering the fines and fees and rebuilding his life. CP at 309–10, 743. By imposing patently insurmountable fines on Eyman, the lower court erred as a matter of constitutional law and of fundamental logic. *See People v. Duenas*, 30 Cal. App. 5th 1157, 1167, 242 Cal. Rptr. 3d 268, 275 (2019) ("Imposing unpayable fines on indigent defendants is not only unfair, it . . . may be counterproductive. A fine on indigent people . . . is imposed to

augment the State's revenues but obviously does not serve that purpose; the defendant cannot pay.").

C. Even if the trial court had picked the correct period, it erred in holding that Eyman can pay now based on his assets in early 2021

Even if the Court were correct to narrowly consider only November 2020 through January 2021 (it was not), the trial court's decision was indefensible. In *Long*, the Washington Supreme Court held that an impoundment fee for a towed car—even on a $50 per month payment plan—was unconstitutionally excessive because it deprived the owner of his ability to earn a living and the owner only had $50 in his account and earned only $700 per month at the time he would have to begin payment. 198 Wn.2d at 174–75. Under that payment plan, the owner would satisfy the $547 debt in less than a year and was asked to pay only seven percent of his income.

Long is consistent with modern cases and the historic understanding that fines are excessive if they impoverish or otherwise go beyond a party's ability to pay. *See, e.g.*, *People v.*

Malone, 923 P.2d 163, 165–66 (Colo. App. 1995) ($100,000 fine for a felony unconstitutionally excessive because "the only evidence before the court was that [the defendant] was destitute"); Colgan, *supra*, at 321 ("the Magna Carta treated a fine that would impoverish a defendant as per se disproportionate"); *cf. Ramirez*, 191 Wn.2d at 736, 743–44, 748 (holding that defendant had inability to pay $2,300 in legal costs where he had $10,000 in other debts and no income); *Applegate v. Ruble*, 9 Ky. 128 (1819) (damages of $1,800 not excessive because defendant was worth $18,000).

"[A] historically grounded Excessive Fines Clause jurisprudence would require not just that a fine be set such that it could reasonably be expected to be paid, but require that it be paid while permitting an individual to maintain some minimal level of economic subsistence." Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 896 (2013) (this article was cited in *Long*, 198 Wn.2d at 167 n.10, 169). By

2020 and 2021, the evidence submitted by Eyman and the State established that Eyman could not reasonably be expected to pay the $5.5 million in penalties, fees, and costs, even if he had abandoned his rights by forgoing the appeal in which he partially prevailed. CP at 310, 743.

The fines imposed on Eyman exceeded his assets by millions of dollars at the time. From 2019 to 2022, his income was less than zero. CP at 741. In February 2021, Eyman's bank account held $81,105—mostly from a one-time personal injury settlement from a car accident. CP at 741. He had another $7,501 in his legal defense fund and $40,288 in the bankruptcy "pass through" account that the bankruptcy trustee used to pay creditors. *See id.* These funds were unavailable because of the bankruptcy and insufficient to cover even a few months of interest on the judgment, let alone the $5.5 million judgment.

Below, the State emphasized that Eyman had managed to raise $124,586 in charitable funds in the months leading up to the 2021 judgment, as support for its argument that he has an ability

to pay now. CP at 394−95; CP at 388. This is inappropriate. First, that charity was not even enough to cover interest. And it does not prove a capacity to earn a living. Indeed, there is no legal basis for using past *charity* as a justification for imposing a greater fine on a party than he could bear on his own. Such reasoning would, in effect, penalize charitable giving and undermine the intent and goodwill of donors who believed Eyman was targeted for political reasons. *Cf. Timbs*, 586 U.S. at 152 (noting that excessive fines can chill political speech and were historically used to harass political opponents). Moreover, the court's injunction broadly prohibits him from fundraising for his "political work"—whatever that may mean—unless he establishes a political committee for this purpose, which multiple qualified treasurers have insisted is impossible. CP at 44–45, 316–27. *See also* RCW 42.17A.445 ("contributions" to a political committee cannot generally be used for personal expenses). Thus, *any* charity is still fraught with the risk that the

state might claim it "indirectly" supports Eyman's political work and therefore violates the injunction.

As courts have observed, unpayable fines imposed on indigent defendants are fundamentally unfair, lack any rational justification, frustrate legislative intent, and can even undermine the public interest. *See, e.g.*, *Duenas*, 30 Cal. App. 5th at 1167. Such economic sanctions on individuals who cannot pay do not "augment the State's revenues" nor do they meaningfully further the states "penal objective[s]" because "the defendant cannot pay because he is indigent." *Id.* (citing *Tate v. Short*, 401 U.S. 395, 399, 91 S. Ct. 668, 671, 28 L. Ed. 2d 130 (1971)). This leaves impoverished people to "face collection efforts solely because of their financial status, an unfair and unnecessary burden that does not accomplish the goal of collecting money." *Id.* Indeed, it is not productive to impose a fine that must "continually grow[] larger and can never be paid in full. This is the work of Sisyphus. No scheduled payment by appellant will ever lessen the debt. Appellant should not awake every day for the rest of his life with

the stone rolling down a steeper and steeper hill." *Minnesota v. Maidi*, 520 N.W.2d 414, 422 (Minn. Ct. App. 1994) (Amundson, J., concurring in part).

The $2.6 million fine and roughly $2.8 million in attorney fees were impossible for Eyman to pay in February 2021 (just as they're even more impossible to pay now). CP at 310, 743. By contrast, the $547 fine imposed in *Long*, where the fine was only 7% of the defendant's monthly income, was conceivably possible to pay. *Long*, 198 Wn.2d at 174–75. The fine in *Long* was a heavy—but not insurmountable—burden on a poor individual, and yet it was held to exceed his ability to pay. *Id.* By contrast, there is no plausible means for Eyman to pay the fine or fees here. Nevertheless, the lower court held that the fine was within Eyman's ability to pay because he managed to make several $10,000 monthly payments on sanctions until he no longer could. This rationale suggests that a person's past payment of fines established an ability to pay in the future. Followed to its logical end, the superior court's ruling would

actually discourage defendants' compliance with payment plans, because it would mean their past good-faith compliance would be held against them in an excessive fines analysis.

The Court should reverse and deem the fine unconstitutionally excessive.

II. The attorney fees are at least partially punitive and should be deemed a "fine" within the meaning of the excessive fines clauses and held excessive in light of Eyman's inability to pay

In the first appeal, this Court stated that the $2.8 million in attorney fees imposed on Eyman was not a fine within the meaning of the excessive fines clauses. *Eyman I*, 24 Wn. App. 2d at 848. This Court rested its opinion on the fact that attorney fees are not expressly listed in the statute authorizing penalties, RCW 42.17A.750, but rather authorized in a separate statutory provision, RCW 42.17A.780, and therefore not punitive. *Eyman*, 24 Wn. App. 2d at 848. But this Court's treatment of the attorney fees here conflicts with precedent and therefore should be

reconsidered under RAP 2.5(c)(2).[4] The ruling was clearly erroneous under the Washington Supreme Court's decision in *Long*, 198 Wn.2d at 164. *See Roberson*, 156 Wn.2d at 42 (appropriate to reconsider a clearly erroneous decision of a prior panel where prior panel decision causes injustice to one party). Under *Long*, even actual costs fall within the ambit of the excessive fines clauses if they arise from a punitive enforcement action, just as they did here. *Long*, 198 Wn.2d at 164.

First, as a factual matter, the *Eyman I* panel incorrectly suggested that all penalties authorized by the FCPA appear in RCW 42.17A.750, and since the attorney fee appears elsewhere in RCW 42.17A.780, they cannot be punitive. 24 Wn. App. 2d at 848. But the attorney fee statute itself specifically authorizes trebled attorney fees "as punitive damages" for "intentional"

[4] RAP 2.5(c)(2) provides: "The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review."

misconduct. RCW 42.17A.780. Thus, *Eyman I* was simply incorrect in suggesting the only penalties imposed by the FCPA appear in RCW 42.17A.750. Moreover, the bill that created this attorney fee provision also stated, "The intent of the law is not to trap or embarrass people when they make honest remediable errors," but rather for the government to focus on "intentional violations." Laws of 2018, ch. 304, §§ 1, 17. Accordingly, enforcement actions like this one are specifically aimed at punishing intentional violations. *Id.*

But even if *Eyman I* were correct about legislative intent (it isn't), neither intent nor legislative labels dictate whether an economic sanction is a fine. *See Timbs*, 586 U.S. at 153–54 (emphasizing the broad application of the Clause to all punitive exactions). The functional inquiry governs: if the award is partially punitive in effect, it is a fine. *See Tyler v. Hennepin Cnty.*, 598 U.S. 631, 649–50, 143 S. Ct. 1369, 1382, 215 L. Ed. 2d 564 (2023) (Gorsuch, concurring). *See also United States v. Ward*, 448 U.S. 242, 249, 100 S. Ct. 2636, 2641, 65 L. Ed. 2d

742, 750 (1980) (holding that in the double jeopardy context, even when Congress "inten[ds] to establish a civil, remedial mechanism," the sanctions under the statute can turn a civil remedy into a penalty). When considering whether a sanction falls under the ambit of the Excessive Fines Clause, courts must look not to labels, but to whether the sanction is at least *partially* punitive. *Austin*, 509 U.S. at 622. An economic sanction has the hallmark of punishment when it "cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving *retributive or deterrent purposes*." *Id.* at 610–11 (emphasis added).

Consistent with that rule, *Long* held that actual impoundment costs were at least partially punitive—and therefore within the domain of the excessive fines clauses—because they arose from the punitive action of enforcing parking rules. 198 Wn.2d at 164. "The associated costs were intended to reimburse the city for towing and storage fees, but they did not exist in isolation. The fees were imposed only as a result of the

impoundment" for violating the parking laws, and the impoundment was punitive. *Id.* Thus *Long* stands for the proposition that costs arising from enforcement of a law are at least partially punitive and therefore "fines" subject to the excessive fines clauses. This holding is consistent with the historical meaning of the term. *See* Colgan, *supra*, at 302 ("Colonial and early American statutory and court records show quite clearly that . . . the word 'fine' served as shorthand for a variety of financial deprivations.") (also cited in *Long*, 198 Wn.2d at 161).

Here, the State's attorney fees and court costs arise from the punitive FCPA enforcement action brought pursuant to RCW 42.17A.765 (soon to be RCW 29B.60.040). It cannot be true that the costs in *Long* are subject to the excessive fines clauses, but the fees here are not. Indeed, the attorney fees awarded to the state *exceed the actual costs* to the state, meaning that they are even more clearly punitive than the impoundment costs in *Long*. *See, e.g.*, CP at 287, 873 (salaried employees' hourly cost to state

is closer to $43–$55 per hour, but State receives far more, upwards of $500 at times).

Some courts already recognize that attorney fees and court costs are subject to the Excessive Fines Clause. *See, e.g.*, *People v. Sherrill*, No. 358371, 2023 WL 4044590, at *14 (Mich. Ct. App. June 15, 2023) (unpublished), *appeal denied*, 513 Mich. 972, 998 N.W.2d 681 (2024) ("assessed costs and fees are fines for purposes of the Excessive Fines Clause"); *North Carolina v. Cannady*, 78 N.C. 539, 542 (1878) ("manifestly where the judgment is that he pay a fine of so much and the costs, one is as much a punishment as the other"). Imposing attorney fees on a losing party is intended to "deter" unwanted litigation and "punish" the loser. *See, e.g.*, *White v. Gen. Motors Corp.*, 908 F.2d 675, 684 (10th Cir. 1990). In *White*, the Tenth Circuit noted that imposing attorney fees and costs as sanctions on a party is aimed at deterring unwanted conduct and therefore is punitive. *Id.* at 685. Thus, the court required consideration of "the offender's ability to pay . . . not because it affects the

egregiousness of the violation, but because the purpose of monetary sanctions is to deter" and therefore akin to punishment. *Id. Cf. Charles v. Daley*, 846 F.2d 1057, 1063 (7th Cir. 1988) ("[P]unishment and deterrence are undeniably important purposes of section 1988," which authorizes attorney fee for prevailing party in civil claim enforcing constitutional rights).

Washington courts also recognize that attorney fees have a *deterrent* effect on individuals. *Walters*, 151 Wn. App. at 324–25 (contract provision requiring losing party to pay attorney fees unconscionable because "[t]his risk is an enormous *deterrent* to an employee contemplating a suit to vindicate the right to overtime pay") (emphasis added). "Deterrence . . . has traditionally been viewed as a goal of punishment." *Bajakajian*, 524 U.S. at 329. Relatedly, Washington prohibits courts from imposing discretionary court costs and attorney fees on "indigent" convicted criminals, RCW 10.01.160(3), and requires courts to "engage in an on-the-record individualized inquiry into the defendant's ability to pay." *Ramirez*, 191 Wn.2d at 745–46.

American courts have long recognized that legal expenses may serve punitive purposes. Juries in punitive damages cases are often instructed that they may consider the plaintiff's legal expenses in determining an appropriate sanction. *See, e.g.*, *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 15–16, 111 S. Ct. 1032, 1041–42, 113 L. Ed. 2d 1, 18–19 (1991) (upholding punitive damages scheme that permitted consideration of litigation costs); *Bowden v. Caldor, Inc.*, 350 Md. 4, 28, 710 A.2d 267, 278 (1998) (noting the "important principle, long recognized under . . . that the amount of punitive damages 'should not be disproportionate to . . . the defendant's ability to pay'"). Courts addressing restitution orders illustrate a related principle: restitution is compensatory only when tied to actual loss; when it exceeds that loss, it functions as punishment. *See, e.g.*, *United States v. Lessner*, 498 F.3d 185, 206 (3d Cir. 2007) (restitution untethered to loss becomes punitive); *People v. Hanson*, 23 Cal. 4th 355, 361, 97 Cal. Rptr. 2d 58, 62–63, 1 P.3d 650, 653 (2000) (restitution must be rationally related to victim's

loss, otherwise it is punitive). These examples confirm that attorney's fees can function as punishment. When they do, they fall squarely within the Excessive Fines Clause.

Here the attorney fees are plainly punitive. The fees and costs partly arise from the punitive action of bringing a civil suit for violation of the FCPA. That is enough to qualify them as "fines" within the meaning of *Long*, 198 Wn.2d at 164. *See also Austin*, 509 U.S. at 610 (Clause applies to sanctions that "serv[e] in part to punish"). Moreover, the fees in this case are even more clearly punitive than the actual impoundment costs in *Long*: the now $4 million attorney fees imposed here far exceed actual costs of enforcement, serving retributive or deterrent purposes. *Bajakajian*, 524 U.S. at 328; *see also* CP at 287, 873 (salaried employees' rates work out closer to $55 or $43 per hour, but Eyman is charged at times more than $500 per hour); *Austin*, 509 U.S. at 621 (forfeiture of property was a penalty in part because it had "no correlation to [the] damages sustained [from] . . . enforcing the law") (quotation omitted). The fees, which are even

larger than the unconstitutionally excessive fines, are punitive and, in light of Eyman's absolute inability to pay described above in Section I, unconstitutionally excessive.

III. The injunction violates the FCPA because it exceeds the authority provided in the statute

The trial court held that it could not modify the permanent injunction imposed on Eyman because it was bound by the law of the case doctrine. CP at 900. The court erred. The law of the case doctrine does not apply here. Washington law specifically authorizes a party bound by an injunction to bring a motion to dissolve "at any time after reasonable notice to the adverse party." RCW 7.40.180. *See also* RCW 7.40.020 (permanent injunction "may afterwards be dissolved or modified upon motion"). Moreover, Washington courts retain "inherent" equitable jurisdiction to revise permanent injunctions "based upon the principle that a preventive injunction is fundamentally different from any other judgment or decree." *State ex rel. Bradford v. Stubblefield*, 36 Wn.2d 664, 675, 220 P.2d 305 (1950). On remand, Eyman brought such a motion to dissolve or

revise the injunction. CP at 346–53. The trial court erred in holding it lacked the power to reconsider its terms.

But even if the trial court were correct that the law of the case doctrine prevented the trial court from revising the remainder of the injunction (it wasn't), this Court should revisit the matter pursuant to RAP 2.5(c)(2), which authorizes this Court to reconsider the prior panel's decision and to reach the question of the remainder of the injunction's legality. *See Roberson*, 156 Wn.2d at 42.

In *Eyman I*, this Court considered and overturned two provisions of the injunction and declined to consider Eyman's challenge to the rest of the injunction. 24 Wn. App. 2d at 845–46. Eyman had broadly challenged the injunction as exceeding the authority of the statute, expressly listing the provisions (including those mentioned below) that exceed authority in the statute. Appellant's Opening Br. at 76–77, *Eyman v. State of Washington*, No. 56653-2 (Wash Ct. App. Feb. 18, 2022). The brief then explained "for example" that the FCPA did not

regulate misleading potential donors or "receiving payments from vendors who provide services to [] political committee[s]." *Id.* The brief lacked citation on either point because it is hard to prove a negative. The brief simply noted that the statute does not regulate such activities. *Id.* Eyman then argued, "Going through the list of injunctions, it's the same for every item. There is no statutory basis for any of the edicts." *Id*. Thus, Eyman incorporated by reference the same argument to each item listed in the prior paragraph. *See State v. Ferro*, 64 Wn. App. 195, 198, 823 P.2d 526, 527 (1992) (Washington allows incorporation by reference).

Because the burden of showing entitlement to permanent injunctive relief is on the party seeking the injunction—not on the enjoined party—the State should have responded with citation to the authority within the FCPA that governs the enjoined behavior. *See Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 784, 418 P.3d 102, 110 (2018) ("'[O]ne who seeks relief by . . . permanent injunction must show (1) that he has a clear legal

or equitable right . . .'"). But in response to Eyman's argument, the State could not show the enjoined activities were actually governed by the FCPA, and so it instead argued the Attorney General has "broad powers to enforce the FCPA." *See* Resp't Br. at 74–75, *Eyman v. State of Washington*, No. 56653-2 (Wash. Ct. App. May 4, 2022). The State ignored Eyman's argument that the injunction exceeded the bounds of the FCPA.

This Court then struck the two examples repeated by Eyman because neither of the provisions "enjoin[ed] Eyman from doing acts prohibited in the FCPA." *Eyman I*, 24 Wn. App. 2d at 846. This was despite the Court noting that the prohibited conduct might be "improper" or "illegal." *Id.* The only relevant question to whether the injunction is proper is whether there is any "provision of the FCPA that prohibits a person from" the conduct prohibited by the injunction. *Id.* But the court then concluded that Eyman failed to present a "meaningful argument" regarding the other provisions in the injunction, despite his clear attempt to do so. *See id.* at 846 n.7. That refusal to consider

Eyman's attempt to incorporate his identical argument against each injunctive provisions listed in the prior paragraph, was clearly erroneous and caused injustice to Eyman. *See* RAP 2.5(c); *Roberson*, 156 Wn.2d at 42.

It is in the interest of justice and the rule of law to ensure that the sweeping relief imposed by a *lifelong injunction* complies with the law. An injunction is an "extraordinary remedy" that "should be used sparingly and only in a clear and plain case." *Kucera v. State*, 140 Wn.2d 200, 209, 995 P.2d 63, 68 (2000) (quotation omitted). And "a preventive injunction is fundamentally different from any other judgment or decree." *Stubblefield*, 36 Wn.2d at 675. Recognizing the extraordinary nature of injunctive relief, Superior Court Civil Rule 65(d) requires an injunction be "specific in its terms" and to "describe in reasonable detail" the acts to be restrained. This specificity requirement, like the analogous requirement in Federal Rule of Civil Procedure 65(d), is meant to prevent "vague decrees that can transform the contempt power from a 'potent weapon' into a

'deadly one.'" *N.Y. Telephone Co. v. Commc'ns Workers of Am.*, 445 F.2d 39, 48 (2d Cir. 1971) (quoting *Int'l Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76, 88 S. Ct. 201, 208, 19 L. Ed. 2d 236, 245 (1967)).

The FCPA authorizes courts to issue injunctions only to "prevent the doing of any act herein prohibited, or to compel the performance of any act required herein." RCW 42.17A.750(1)(i) (soon to be RCW 29B.60.010(1)(i)). This language is clear and limited, unlike the language of the injunction, which is unclear and exceeds the authority of the FCPA. The FCPA does not authorize courts to restrict otherwise lawful conduct simply because the person has violated the FCPA in the past. The injunction must be tied directly to a prohibited act or a required act under the statute. There is no provision in the FCPA that authorizes a forward-looking ban on lawful behavior based solely on prior violations.

The injunction here prohibits conduct that the FCPA does not itself prohibit or compels conduct that the FCPA does not

require. The first two full paragraphs of the injunction have previously been struck down for this very reason. The rest of the injunction likewise exceeds the scope of the FCPA:

1. It broadly requires reporting of all funds received, including funds that are not governed by the FCPA: The third full paragraph of the injunction requires Eyman to report "any gifts, donations, or other funds" received "directly or indirectly" unless for legal defense or in some cases from an employer who properly files a W-2. CP at 44. The FCPA only mandates disclosure of "contributions" for most state election campaigns, not all personal receipts and not even all campaigns. *See generally* RCW 42.17A.200 (e.g., does not apply to campaigns for federal elective office), 42.17A.225, 42.17A.005(14), (15), (41) (soon to be RCW 29B.25.070, 29B.10.420). This compels actions that the FCPA does not regulate and therefore is invalid.

2. The injunction prohibits Eyman from internally approving disclosure statements, even though the FCPA only governs who may "certify" reports: The injunction bars

Eyman from approving disclosure statements. CP at 45. The FCPA requires timely and accurate filings, *see* RCW 42.17A.225 (soon to be 29B.25.070), and requires a treasurer to certify the accuracy of the report, RCW 42.17A.235, but it does not regulate who may "approve" them internally. Thus, this provision goes beyond the activity regulated by the FCPA.

3. It prohibits soliciting donations for "political work" without establishing a political committee, even though the FCPA only governs work on certain kinds of campaigns—not all political work: This Court previously held that this provision does not apply to strictly charitable giving, but the Court ignored Eyman's complaint that the FCPA does not authorize the regulation of "political work." *See Eyman I*, Opening Br. at 75–76. If the injunction's true purpose is to regulate contributions for Eyman's work toward political campaigns within the scope of the FCPA, it should clearly have stated as much. "Political work" is undefined in the statute and could arguably regulate activities that are expressly outside the

scope of the FCPA, like federal campaigns. The Court should strike the provision.

4. It prohibits managing, authorizing, accessing, or handling funds in any way, even though the FCPA does not regulate qualifications for such roles: The injunction's fourth full paragraph prohibits Eyman from "managing . . . financial transactions . . . for any [political] [c]ommittee." CP at 44–45. The injunction further prohibits him from having "any financial decision making authority for any political committee" or authorizing any committee expenditures, including as an agent for a committee to negotiate or otherwise agree to expenditures. CP at 45 ¶¶ 6–8. Indeed, the injunction prohibits him from having any access to any contribution to any political committee account, including handling any contributions—even temporarily carrying a check from a donor to the committee. *See* CP at 45 ¶¶ 4–5. These prohibitions on Eyman stray widely from the bounds of the FCPA, which only requires that campaign expenses be "authorized by the candidate or the person or

persons named on the candidate's or committee's registration form." RCW 42.17A.425. There is no special qualification for those named persons. *See* RCW 42.17A.205 (only requiring the name and contact information to be listed). And the FCPA does not authorize removing that authority based on past violations. *See id.* As for handling "contributions," the FCPA requires committee funds to be "deposited by candidates, political committee members, paid staff, or treasurers" in an account "established and designated" for the committee's purpose within five days of receipt, RCW 42.17A.220, and such contributions must be reported. RCW 42.17A.225 (soon to be 29B.25.070). The FCPA does not authorize preventing committee members, staff, or treasurers from depositing into such accounts based on past violations.

5. It prohibits Eyman from serving as a treasurer, even though the FCPA requires only legal competency: The injunction forbids Eyman from being named as treasurer or deputy treasurer. *See* CP at 45 ¶ 1. Under 42.17A.210 and

42.17A.240,[5] the FCPA requires committees to merely designate a "legally competent individual" to serve as a treasurer and file accurate reports, but it provides no other professional qualifications, nor does it disqualify individuals from serving based on prior violations.

6. It requires any loans from Eyman to a political committee to be in writing and prohibits Eyman from loaning money to a committee he is involved with despite the FCPA's silence on such matters: *See* CP at 45–46 ¶ 10. RCW 42.17A.240(3) requires campaign reports to include information about loans. It does not govern whether someone involved with a committee may loan money to the committee.

7. It bars solicitations for campaign vendors without any basis in the FCPA: *See* CP at 46. The FCPA regulates campaign contributions, not other types of contributions. The

[5] Starting in 2026, the statutes will move to RCW 29B.25.040 and RCW 29B.25.100.

provision as written is beyond the scope of the FCPA and should be revised or struck.

Each provision of the injunction does more than compel required behavior or prevent prohibited behavior. Instead, each provision is a limit on otherwise lawful behavior. *Eyman I* makes clear that an injunction under the FCPA must either prohibit conduct that would violate the statute or compel conduct the statute requires. 24 Wn. App. 2d at 845–46. These provisions do neither. Categorically banning Eyman from lawful roles under the FCPA, restricting otherwise lawful management and receipt of funds, and requiring Eyman to report every dollar or gift he receives all go much further than restricting prohibited conduct or compelling required conduct. This Court should remand with instructions to strike or modify each of the offending provisions to comply with the FCPA.

Assuming *arguendo* that any portion of the injunction is deemed consistent with the FCPA and is not struck, this Court should either clarify it or remand with instructions to clarify

Eyman's responsibilities under it. As written, the injunction is vague and ambiguous particularly because the court held that Eyman "is a 'continuing political committee'" CP at 35. That holding, itself, is dangerously ambiguous, in part, because it is written in the present tense rather than the past tense—leaving the door open for the State to argue that Eyman is still (and always will be) a continuing political committee, regardless of what he does. This Court should clarify that is not what it means. Again, every qualified professional that Eyman asked to assist him in establishing such a continuing committee refused him, noting it would be impossible to comply with the FCPA and the court's commands.

Even without the problems caused by the present-tense language in the court's decision regarding the continuing political committee, the terms of the injunction are shockingly ambiguous. For example, the requirement that Eyman report "any gifts, donations, or other funds" is unqualified and could be read to compel disclosure of every dollar Eyman receives—from

Christmas gifts from family to personal loans to contract work—regardless of any nexus to campaign finance. It is entirely unclear what "support his political work" means in the context of the ninth numbered statement, as both "support" and "political work" are undefined by the injunction and by the FCPA. CP at 45. Indeed, the FCPA does not govern "political work," but campaign contributions and expenditures. The prohibition on "managing, controlling, negotiating, or directing financial transactions of any kind for any committee" does not distinguish between Eyman's personal finances and his involvement with political committees. CP at 44. These ambiguous terms create uncertainty about whether terms in the injunction apply only when Eyman engages in campaign finance or whether it permanently governs his personal life. This problem is compounded by the real threat of unwittingly qualifying as a continuing political committee in the future.

The injunction violates the FCPA because it exceeds the scope provided therein. The injunction read literally sweeps far

more broadly than intended by the FCPA, chilling protected speech, and turning the threat of contempt "from a potent weapon into a deadly one." *N.Y. Telephone Co.*, 445 F.2d at 48 (internal quotation marks omitted).

IV. Eyman is entitled to prevailing party attorney fees on appeal

Pursuant to RAP 18.1(b), Appellant Eyman requests an award of reasonable attorney fees, costs, and expenses at trial and on appeal. Such an award is based on RCW 42.17A.780 which provides a prevailing defendant "shall" be entitled to such an award.

CONCLUSION

The Court should hold the fines and fees are unconstitutionally excessive because Eyman is unable to pay them. The Court should eliminate or reduce the fines and fees and hold the terms of the injunction 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 11,458 words.

DATED: October 24, 2025.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

By: s/ *Christina M. Martin*
Christina M. Martin, WSBA # 60377
1425 Broadway # 429
Seattle, Washington 98122
Telephone: (425) 576-0484
CMartin@pacificlegal.org

Johanna Talcott
Florida Bar # 1008094
4440 PGA Blvd., Suite 307
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
JoTalcott@pacificlegal.org

Attorneys for Defendant-Appellant Tim Eyman

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: October 24, 2025.

s/ *Christina M. Martin*
Christina M. Martin, WSBA # 60377

PACIFIC LEGAL FOUNDATION

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- richard@landuselawwa.com
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Comments:

Appellant's Opening Brief

Sender Name: Brien Bartels - Email: bbartels@pacificlegal.org
Filing on Behalf of: Christina Marie Martin - Email: cmartin@pacificlegal.org (Alternate Email: incominglit@pacificlegal.org)

Address:
555 Capitol Mall, Suite 1290
Sacramento, CA, 95814
Phone: (916) 419-7111 EXT 3521

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