SUPREME COURT OF THE STATE OF WASHINGTON

State v. Grocery Mfrs. Ass'n, 195 Wn. 2d 1

455 P.3d 1023 (2020) · No. 96604-4 · Decided April 16, 2020

SUMMARY

The Washington Supreme Court held that the Grocery Manufacturers Association was a political committee under the contribution prong of Washington’s Fair Campaign Practices Act and was required to register and disclose contributions and expenditures related to Initiative 522. The court rejected the Association’s as-applied First Amendment challenge and held that the trial court applied the proper standard in finding intentional violations warranting a trebled penalty. The court remanded for consideration of whether the penalty violated the federal or state excessive fines clauses.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Yu, J.
JURISDICTION	Washington
DECIDED	April 16, 2020
DOCKET	96604-4
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sued the Grocery Manufacturers Association for alleged violations of Washington's Fair Campaign Practices Act during the 2013 campaign opposing Initiative 522. The trial court granted summary judgment for the State on liability, imposed a $6 million civil penalty, and trebled it to $18 million after a bench trial. The Court of Appeals affirmed most rulings but reversed the treble penalty. The Washington Supreme Court granted review of both parties' petitions.
STANDARD OF REVIEW	Questions of statutory interpretation and constitutional validity are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Washington, Robert W. Ferguson, Attorney General of the State of Washington, in his official capacity v. Grocery Manufacturers Association

TOPICS

campaign finance · election law · first amendment · statutory interpretation · excessive fines

PRACTICE AREAS

campaign finance · election law · constitutional law · statutory interpretation · civil penalties

QUESTIONS PRESENTED

1. Whether GMA was a political committee under Washington's Fair Campaign Practices Act during the 2013 election cycle.
2. Whether the FCPA's registration and disclosure requirements were constitutional as applied to GMA under the First Amendment.
3. Whether GMA violated the FCPA's prohibition on concealing the sources of campaign contributions and expenditures.
4. Whether an intentional FCPA violation requires subjective knowledge that the conduct violated the law before a court may treble the judgment as punitive damages.
5. Whether the civil penalty imposed on GMA violated the excessive-fines clauses of the federal and state constitutions.
6. Whether either party was entitled to attorney fees on review.

HOLDINGS

1. GMA was a political committee during the 2013 election cycle under the FCPA's contribution prong because it expected to receive contributions for electoral purposes through a segregated fund, and the contribution prong does not require proof that opposing a candidate or ballot proposition was the entity's primary purpose.
2. The FCPA's registration and disclosure requirements for political committees are constitutional as applied to GMA.
3. GMA violated RCW 42.17A.435 because it created and used the Defense of Brands account, solicited member contributions, transferred funds to No on 522, and advised members on diverting attention from the true funding sources for the purpose of concealment.
4. For purposes of FCPA violations, an intentional violation requires intent to accomplish an act prohibited by the FCPA, but does not require subjective knowledge that the conduct was illegal.
5. The Supreme Court did not decide whether GMA's base or trebled penalty was an unconstitutional excessive fine; it remanded the excessive-fines claim to the Court of Appeals for consideration.

KEY QUOTATIONS

> *"With these observations, we reverse the Court of Appeals on this issue and hold that for purposes of FCPA violations, intentional has its ordinary meaning, which requires only the intent to accomplish an illegal act. The violator is not required to subjectively know that its conduct is illegal."* (195 Wn. 2d at 37)

> *"Campaign finance disclosure laws will be largely nullified, despite decades of controlling precedent upholding their validity."* (195 Wn. 2d at 28)

FACTUAL BACKGROUND

During the 2013 election cycle, GMA collected more than $14 million in optional contributions from member companies through a segregated Defense of Brands account and transferred approximately $11 million to the No on 522 political committee. The contributions were attributed publicly to GMA without identifying the contributing member companies. GMA had created the account in part to shield member contributions from public scrutiny, did not register as a political committee, and did not file required disclosure reports until after the State initiated litigation.

PROCEDURAL HISTORY

The State filed suit alleging that GMA failed to register and report as a political committee and concealed the true sources of campaign contributions. GMA counterclaimed for a declaration that the FCPA requirements violated the First Amendment as applied. The trial court ruled against GMA on summary judgment, later found intentional violations, and imposed an $18 million trebled penalty. The Court of Appeals largely affirmed but reversed on trebling and did not reach GMA's excessive-fines claim. The Supreme Court affirmed the FCPA liability and its constitutionality as applied, reversed the Court of Appeals' treble-penalty ruling, and remanded the excessive-fines claim to the Court of Appeals.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded to the Court of Appeals to consider GMA's excessive-fines claim, including whether the $6 million base penalty and $18 million trebled penalty were grossly disproportional and constitutionally permissible. The Supreme Court also awarded the State attorney fees on review and denied GMA attorney fees.

CASES CITED

- Voters Educ. Comm. v. Pub. Disclosure Comm'n, 161 Wn.2d 470, 479-80, 166 P.3d 1174 (2007)
- Utter ex rel. State v. Bldg. Indus. Ass'n of Wash., 182 Wn.2d 398, 413-28, 341 P.3d 953 (2015)
- State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 111 Wn. App. 586, 598-603, 49 P.3d 894 (2002)
- State v. Dan J. Evans Campaign Comm., 86 Wn.2d 503, 508-09, 546 P.2d 75 (1976)
- Human Life of Wash. Inc. v. Brumsickle, 624 F.3d 990, 997, 1006-07, 1014, 1020-21 (9th Cir. 2010)
- State v. Evergreen Freedom Found., 192 Wn.2d 782, 789, 799-801, 432 P.3d 805 (2019)
- Indep. Inst. v. Williams, 812 F.3d 787, 797 (10th Cir. 2016)
- City of Seattle v. Evans, 184 Wn.2d 856, 861 n.5, 366 P.3d 906 (2015)
- Buckley v. Valeo, 424 U.S. 1, 64, 66-72 (1976)

- Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 340, 365-71 (2010)
- McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 348-39 (1995)
- (WIN) Wash. Initiatives Now v. Rippie, 213 F.3d 1132, 1139 (9th Cir. 2000)
- NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 462, 466 (1958)
- Brown v. Socialist Workers '74 Campaign Comm. (Ohio), 459 U.S. 87, 99-100 (1982)
- State ex rel. Pub. Disclosure Comm'n v. Permanent Offense, 136 Wn. App. 277, 280, 284, 150 P.3d 568 (2006)
- State v. Hahn, 83 Wn. App. 825, 832, 924 P.2d 392 (1996)
- State v. Stannard, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)
- In re Disciplinary Proceeding Against Vanderveen, 166 Wn.2d 594, 611, 211 P.3d 1008 (2009)
- Bradley v. Am. Smelting & Ref. Co., 104 Wn.2d 677, 682-83, 709 P.2d 782 (1985)
- Kolstad v. Am. Dental Ass'n, 527 U.S. 526, 538 (1999)
- Dailey v. N. Coast Life Ins. Co., 129 Wn.2d 572, 575, 919 P.2d 589 (1996)
- United States v. Bajakajian, 524 U.S. 321, 334, 337-40 (1998)
- United States v. $100,348.00 in U.S. Currency, 354 F.3d 1110, 1122 (9th Cir. 2004)
- Timbs v. Indiana, 586 U.S. 319, 139 S. Ct. 682, 689 (2019)
