

1  EXPEDITE  
2  No Hearing Set  
3  Hearing is Set:  
4       Date: Friday, March 25, 2016  
5       Time: 9:00 a.m.  
6 The Honorable Gary Tabor

7                                   **STATE OF WASHINGTON**  
8                                   **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON, *ex rel.*,  
10 WASHINGTON STATE PUBLIC  
11 DISCLOSURE COMMISSION,

12                                   Plaintiff,

13                                   v.

14 FOOD DEMOCRACY ACTION! and FOOD  
15 DEMOCRACY ACTION! Yes on I-522  
16 COMMITTEE TO LABEL GMOs in  
17 Washington,

18                                   Defendants.

NO. 14-2-02381-0

STATE OF WASHINGTON'S  
PARTIAL MOTION FOR  
SUMMARY JUDGMENT

1 **I. INTRODUCTION**

2 In 2013, Defendants Food Democracy Action! and Food Democracy Action! Yes on  
3 I-522 Committee to Label GMOs in Washington (collectively “FDA”) supported the passage  
4 of Initiative 522, a ballot measure that would have required labeling of genetically modified  
5 foods. To do so, FDA used its newsletters to solicit money from its members and supporters to  
6 make contributions to the Yes of I-522 political committee. In doing so, FDA created a  
7 political committee it then failed to register with the State and report the financial transactions.  
8 This failure violated several Washington campaign finance disclosure laws.

9 Our state has long required disclosure of campaign contributions and expenditures so  
10 that voters can make informed choices. FDA violated the law in two ways: (1) by failing to  
11 register a political committee and report its activities even as it was receiving contributions  
12 from its members and making expenditures to support Initiative 522; and (2) by concealing the  
13 true source of funds it was spending to support Initiative 522. These violations undermine the  
14 very purpose of state disclosure laws.

15 In this action, the Attorney General seeks to hold FDA accountable for their actions.  
16 The undisputed facts described below demonstrate that FDA violated state law. The Court  
17 should grant partial summary judgment for the State, leaving the appropriate penalty and award  
18 of attorneys fees and costs as the sole issues to be decided.

19 **II. OVERVIEW OF WASHINGTON CAMPAIGN FINANCE**  
20 **DISCLOSURE LAW**

21 Washington voters expect transparency in their campaigns and elections. In 1972,  
22 voters enacted Initiative 276, declaring that it is “the public policy of the state of Washington:  
23 (1) That political campaign . . . contributions and expenditures be fully disclosed to the public  
24 and . . . (10) That the public’s right to know of the financing of political campaigns . . . far  
25 outweighs any right that these matters remain secret and private.” RCW 42.17A.001.  
26

1 The State enforces the disclosure laws to ensure that political campaign committees  
2 comply. These laws “seek to ferret out those whose purpose is to influence the political  
3 process and subject them to the reporting and disclosure requirements of the act in the interest  
4 of public information.” *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508,  
5 546 P.2d 75 (1976). The “requirements do not restrict political speech – they merely ensure  
6 that the public receives accurate information about who is doing the speaking.” *Voters Educ.*  
7 *Comm. v. Pub. Disclosure Comm’n*, 161 Wn.2d 470, 498, 166 P.3d 1174 (2007).

8 The law requires disclosure and reporting by “political committees,” which it defines as  
9 “any person . . . having the expectation of receiving contributions or making expenditures in  
10 support of, or opposition to, any candidate or ballot proposition.” RCW 42.17A.005(37). A  
11 “person” under the Act is broadly defined to include organizations of all sorts, including  
12 “association[s].” RCW 42.17A.005(36); *see also State ex rel. Evergreen Freedom Found. v.*  
13 *Wash. Educ. Ass’n (EFF)*, 111 Wn. App. 586, 602, 49 P.3d 894 (2002) (political committee  
14 includes person or organization). Ballot proposition includes any “question or measure  
15 submitted to voters” or any proposed initiative “from and after the time when the proposition  
16 has been initially filed with the appropriate election officer of that constituency before its  
17 circulation for signatures.” RCW 42.17A.005(4); RCW 29A.04.091. Thus, relevant here, an  
18 organization qualifies as a political committee “by either (1) expecting to receive or receiving  
19 contributions, or (2) expecting to make or making expenditures” for any initiative from the  
20 time of its initial filing for signatures to its final submission to the voters. *EFF*, 111 Wn. App.  
21 at 598; *see also Utter v. Bldg. Indus. Assn. of Washington*, 182 Wn.2d 398, 341 P.3d 953  
22 (2015).

23 Case law has applied and clarified the political committee definition. Under the first  
24 prong, an organization has “the expectation of receiving contributions . . . in support of, or  
25 opposition to, any candidate or ballot proposition,” when its members have “actual or  
26 constructive knowledge that the organization is setting aside funds to support or oppose a

1 candidate or ballot proposition.” *Human Life of Washington, Inc. v Brumsickle*, 624 F.3d 990,  
2 1020 (9th Cir. 2010) (citing *EFF*, 111 Wn. App. at 602); *see also Utter*, 182 Wn.2d at 416-17.

3 Under the second prong, an organization is a political committee if it “mak[es]  
4 expenditures in support of, or opposition to, any candidate or ballot proposition,”  
5 RCW 42.17A.005(37), and “one of its primary purposes is political advocacy.” *Human Life of*  
6 *Washington, Inc.*, 624 F.3d at 1020; *see also Utter*, 182 Wn.2d at 427. The “primary purpose”  
7 limitation “ensures that the electorate has information about groups that make political  
8 advocacy a priority, without sweeping into its purview groups that only incidentally engage in  
9 such advocacy.” *Human Life of Washington, Inc.*, at 1011.

10 Once an organization’s conduct triggers the definition of political committee, it must  
11 register a political committee with the Public Disclosure Commission (PDC) and publicly  
12 report contributions received and expenditures made on a fixed schedule throughout a given  
13 election cycle. RCW 42.17A.205(1) requires political committees to file a statement of  
14 organization with the PDC within two weeks after organizing or within “two weeks after the  
15 date when it first has an expectation of receiving contributions or making expenditures in any  
16 election campaign, whichever is earlier.” Within this same time frame, a political committee  
17 must also appoint a treasurer (RCW 42.17A.210(1)) and open a designated bank account in  
18 which political contributions must be deposited. RCW 42.17A.215. On the day a treasurer is  
19 identified, a political committee must file a report of all contributions received and  
20 expenditures made prior to that date. RCW 42.17A.235. All deposits must be made within  
21 five days of receiving the contribution. RCW 42.17A.220(1). The political committee must  
22 thereafter file regular reports with the PDC of all contributions received and expenditures  
23 made. RCW 42.17A.235, .240. To ensure that the true source of all contributions and  
24 expenditures is transparent to the public, RCW 42.17A.435 prohibits concealment of these  
25 transactions. *See State ex rel. Washington State Pub. Disclosure Comm’n v. Permanent*  
26 *Offense*, 136 Wn. App. 277, 150 P.3d 568 (2006), *review denied*, 162 Wn.2d 1003 (2007).

1 **III. STATEMENT OF FACTS**

2 **A. FDA Organizational Structure**

3 Defendant Food Democracy Action! admits that it is registered with the Internal  
4 Revenue Service as a 501(c)(4) non-profit organization. See FDA Answer to Complaint at 2,  
5 ¶ 5. Defendant Food Democracy Action! Yes on I-522 Committee to Label GMOs in  
6 Washington is a political committee which registered with the State of Washington on  
7 November 13, 2013. FDA Answer to Complaint at 2, ¶ 6. See also Declaration of  
8 Kurt Young, ¶ 4, State Ex. 1.

9 **B. 2012 California Proposition 37**

10 In 2012, California voters rejected an initiative (Proposition 37) that would have  
11 required labeling of genetically modified or engineered food. Declaration of Linda Dalton, ¶ 9,  
12 State Ex. G. FDA supported this initiative and contributed money in its own name to the Yes  
13 on 37 For Your Right To Know political committee. Dalton Dec., ¶ 9, State Ex. F.

14 **C. Initiative 522**

15 On June 29, 2012, Chris and Leah McManus submitted Initiative 522 to the  
16 Washington Secretary of State as an initiative to the legislature. See Dalton Dec., ¶ 3, State  
17 Ex. A. Initiative 522 would have “require[d] most raw agricultural commodities, processed  
18 foods, and seeds and seed stocks, if produced using genetic engineering as defined, to be  
19 labeled as genetically engineered when offered for retail sale.” *Id.*

20 The Secretary of State forwarded Initiative 522 to the legislature. Dalton Dec., ¶ 4,  
21 State Ex. B. After the legislature took no action on it, Initiative 522 appeared on the  
22 November 5, 2013 General Election ballot. See Dalton Dec., ¶ 5, State Ex. C; see also  
23 RCW 29A.72.110, .270. Initiative 522 was rejected by the voters. See Office of the Secretary  
24 of State, November 5, 2013 General Election Results, Measures,  
25 <http://results.vote.wa.gov/results/20131105/Measures.html>. See also FDA Answer to  
26 Complaint at 3, ¶ 9; Dalton Dec., ¶ 6, State Ex. D.

1 **D. FDA's Contributions To The Yes On I-522 Committee**

2 Starting on July 2, 2013, FDA began sending newsletters to encourage its members and  
3 supporters to support the labeling efforts in Washington, including Initiative 522. *See* FDA  
4 Answer to Complaint, ¶ 14; Young Dec., ¶ 11, State Ex. 6; Dalton Dec., ¶ 10. FDA! used the  
5 newsletters as a fundraising campaign to raise and receive money to support Initiative 522. *Id.*

6 Starting on July 30, 2013, FDA received contributions from its members and  
7 supporters. Young Dec., ¶ 6, State Ex. 3. Over 7,000 people gave money to FDA. Most of  
8 those people were from outside the state of Washington. *See, e.g.,* Young Dec., State Ex. 3. In  
9 total, FDA raised \$295,661.58 to support Initiative 522. Young Dec., ¶ 6, State Ex. 4. Of that  
10 amount, FDA spent \$200,000 in contributions to the Yes on I-522 political committee. Young  
11 Dec., ¶ 7.

12 FDA made the following cash contributions to the Yes on I-522 political committee  
13 from the funds it collected: (a) August 16, 2013 - \$50,000; (b) October 15, 2013 - \$50,000;  
14 (c) October 24, 2013 - \$50,000; (d) October 25, 2013 - \$25,000, and (e) October 30, 2013 -  
15 \$25,000. Young Dec., ¶ 7. The political committee registered by FDA reported spending  
16 \$50,025.90 of the money collected to pay FDA for data and staff services, as well as PayPal for  
17 credit card processing fees. Young Dec., ¶ 8, State Ex. 5. FDA identified itself as the  
18 contributor to the Yes on I-522 political committee, rather than the individuals who gave the  
19 money to FDA. *Id.* at ¶ 9. All of the funds collected by FDA were received by FDA prior to it  
20 registering a political committee in Washington State. *Id.* at ¶ 10.

21 **E. FDA's Failure To Comply With Washington's Campaign Finance Laws**

22 On October 28, 2013, the Attorney General's Office received a complaint that included  
23 allegations that FDA solicited and then contributed the funds received to the Yes on 522  
24 committee, identifying only FDA as the source of the contributions. Dalton Dec., ¶ 7, State  
25 Ex. E. After being notified of the complaint, FDA registered a political committee. Young  
26 Dec., ¶ 4, State Ex. 1. The defendant political committee filed 12 reports (Form C3) disclosing

1 its contributors, the dates of receipt of the contribution, and the amount of the contribution.  
2 Young Dec., ¶ 10. The committee also filed five reports (Form C4) disclosing a summary of  
3 its financial transactions including the expenditures it made to the Yes on I-522 political  
4 committee. Young Dec., State Ex. 4.

5 Following the PDC staff investigation and a review by and recommendation from the  
6 Public Disclosure Commission (Young Dec., ¶ 12, State Ex. 7), the State commenced this  
7 enforcement proceeding against FDA on December 14, 2014, charging them with failing to  
8 timely register and properly report a political committee, as well as concealing the source of  
9 the funds used to contribute to the Yes on I-522 political committee. Compl. at 5  
10 (Claims ¶¶ 1-5).

#### 11 IV. ISSUES PRESENTED

- 12 1. Was FDA required to register a political committee subject to Washington  
13 State's disclosure requirements?
- 14 2. Did FDA engage in prohibited concealment when it failed to disclose the true  
15 source of the moneys it received and used to support initiative 522?

#### 16 V. STANDARD OF REVIEW FOR RULE 56 MOTION

17 Summary judgment is proper if (1) there is no genuine issue of material fact,  
18 (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled to  
19 judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065  
20 (2000); CR 56(c); *see also Voters Educ. Comm.*, 161 Wn.2d at 481. A material fact is one  
21 upon which the outcome of the case depends, in whole or in part. *Morris v. McNicol*,  
22 83 Wn.2d 491, 494, 519 P.2d 7 (1974).

23 The moving party bears the initial burden of demonstrating the absence of a genuine  
24 issue of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548,  
25 91 L. Ed. 2d 265 (1986). Once the moving party has met its burden, the non-moving party  
26 must produce concrete evidence that shows genuine disputes of fact; it may not rely on

1 | allegations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 2505,  
2 | 91 L. Ed. 2d 202 (1986).

3 | Here, there are no material disputed facts about FDA's conduct in soliciting and  
4 | contributing those solicited funds to the Yes on I-522 political committee. Additionally, no  
5 | facts are in dispute that FDA's actions served to conceal the true source of the contributions to  
6 | the Yes on I-522 political committee. Applying the law to these undisputed facts, summary  
7 | judgment on the issues of violations in favor of the State is appropriate.

## 8 | VI. ARGUMENT

### 9 | A. When FDA Solicited and Received Money From Its Members and Supporters To 10 | Support Initiative 522, It Was Required To Register A Political Committee

#### 11 | 1. FDA Formed A Political Committee As A Receiver Of Contributions

12 | State law obligated FDA to register a political committee because FDA solicited and  
13 | received contributions from its members and supporters for the express purpose of supporting  
14 | Initiative 522 during the 2013 general election. *See* FDA Answer to Complaint at 4, ¶ 14.

15 | As provided above, a political committee is formed when one of the following two  
16 | "prongs" is met: (1) a person has the expectation of receiving or receives political  
17 | contributions, or (2) a person makes or expects to make expenditures to support or oppose  
18 | candidates or ballot propositions. *Utter*, 182 Wn.2d at 413; (1972) *Dan J. Evans Campaign*  
19 | *Comm.*, 86 Wn.2d at 509; RCW 42.17A.005(39). Under case law, an organization has "the  
20 | expectation of receiving contributions...in support of, or opposition to, any candidate or ballot  
21 | proposition" when its members have "actual or constructive knowledge that the organization is  
22 | setting aside funds to support or oppose a candidate or ballot proposition." *Human Life of*  
23 | *Washington, Inc.*, 624 F.3d at 1020; *see also Utter*, 182 Wn.2d at 416-17. Here, FDA  
24 | members and supporters knew that FDA would be using the funds as contributions to support  
25 | Initiative 522 because FDA told them so. *Young Dec.*, ¶ 11, State Ex. 6.

1 Thus, the undisputed facts support that FDA had the expectation of receiving  
2 contributions as of July 2, 2013—the date it first received a contribution—when it sent a series  
3 of newsletters to its members and supporters asking for money. RCW 42.17A.205; Young  
4 Dec., State Ex. 6. The undisputed evidence also shows that after FDA! sent its newsletters, its  
5 members and supporters began sending FDA money. Young Dec., State Ex. 3. All the FDA  
6 records demonstrate that FDA and the contributing members and supporters knew that money  
7 given to FDA would be spent on Washington state campaign activity.

8 In short, based on the undisputed facts, FDA created a political committee when it  
9 solicited funds from its members and supporters with the expectation of supporting Initiative  
10 522. FDA contributed this money to the Yes on I-522 political committee in its own name,  
11 thus hiding the names of the actual sources.

12 **2. FDA Failed To Register and Report The Financial Activities Of Its Political**  
13 **Committee**

14 Washington political committees are required to file a one page registration form and  
15 identify a treasurer and depository. RCW 42.17A.205, .205(2)(d); *see also* WAC 390-16-011.  
16 FDA failed to do so when it began receiving funds. It did not do so until after the allegations  
17 were made against it on October 28, 2013. Once it received notice of the complaint, FDA  
18 registered the defendant Food Democracy Action! Yes on I-522 Committee To Label GMOs in  
19 Washington. Young Dec., ¶ 4, State Ex. 1.

20 If timely registered, FDA would have been required to follow an established schedule  
21 for reporting monies received (contributions to the committee – PDC Form C3 –  
22 WAC 390-16-031) and monies spent by the committee (WAC 390-16-041 – PDC Form C4).  
23 *See* RCW 42.17A.235, .240. FDA filed no contribution reports until November 22, 2013, nine  
24 days after it registered a political committee and 17 days after the election. Young Dec., ¶ 15.

25 FDA should have filed a registration form for the committee no later than  
26 July 16, 2013, 14 days after it sent its first solicitation to its members and supporters asking for

1 financial support. RCW 42.17A.205(1). FDA did not register a political committee or identify  
2 its treasurer until November 13, 2013, 120 days late. *Id.*; *see generally* Young Dec., ¶ 13.  
3 Once registered, FDA should have filed at least 18 reports from July 2013 to  
4 December 31, 2013, including at least 12 C3 reports of income and five C4 Summary Forms of  
5 financial activities. Young Dec., ¶¶ 14-17. After the election, FDA's report disclosing the  
6 final disposition of funds remaining in the committee should have been filed by  
7 December 10, 2013; it was not filed until January 15, 2014. *See* WAC 390-16-041;  
8 Young Dec., ¶ 17.

9 In total, FDA failed to timely file over 18 reports (the reports ranged from 36-120 days  
10 late). Young Decl., ¶¶ 15, 17. By not filing those reports until after the election, FDA hid the  
11 true source of the contributions it received from the public.

12 **B. FDA Improperly Concealed The True Source of the Monies It Used To Contribute**  
13 **to the Yes on I-522 Political Committee**

14 In the interest of transparency, Washington requires full disclosure of the identity of all  
15 persons contributing or making expenditures to state ballot measures and other campaigns.  
16 RCW 42.17A.001(1), .435. Concealing political contributions and expenditures in Washington  
17 is strictly prohibited. RCW 42.17A.435 provides:

18 No contributions shall be made and no expenditure shall be incurred, directly or  
19 indirectly, . . . by one person through an agent, relative or other person in such a  
20 manner as to conceal the identity of the source of the contribution or in any  
other manner so as to effect concealment.

21 This "broad" directive prohibits any person from engaging in "any" manner of concealment.  
22 *Permanent Offense*, 136 Wn. App. at 284, 289 (the State has a substantial interest in promoting  
23 integrity and preventing concealment that could harm the public and mislead voters.). Proof of  
24 *intentional* concealment is not required.

25 Here, FDA concealed the true source of monies it used to contribute to the Yes on  
26 I-522 political committee. Undisputedly, FDA solicited its members and supporters' monies to

1 support Initiative 522. It then used those funds to contribute to the Yes on I-522 political  
2 committee in its own name as if the money was its own. However, until the allegations were  
3 made, FDA concealed the fact that the source of its contributions was really funds it received  
4 from over 7,000 of its members and supporters. Young Dec., ¶ 15.

5 Washington prohibits concealing contributions (including their true source). Every  
6 time that FDA made a contribution in its own name instead of identifying the real people from  
7 whom the money actually came, FDA engaged in concealment in violation of  
8 RCW 42.17A.435. Each of the five contributions to the Yes on I-522 political committee  
9 constitutes a separate act of concealment. Because the undisputed facts establish a pattern of  
10 concealment, the Court should find that FDA violated RCW 42.17A.435 each time it reported  
11 a contribution and failed to identify the true source of the money being contributed.

## 12 VII. CONCLUSION

13 Having violated Washington's campaign finance laws, FDA should now be held to  
14 account. The facts here are not in dispute. From July to October 2013, FDA raised almost  
15 \$300,000 in campaign contributions from over 7,000 people to support Initiative 522. It then  
16 funneled \$200,000 of that money into the Yes on I-522 political committee in its own name,  
17 effectively hiding the identity of the true sources for these contributions from the public.  
18 Washingtonians rightly expect more from those participating in Washington elections.

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**PROOF OF SERVICE**

I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below as follows:

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ABC/Legal Messenger

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26<sup>th</sup> day of February, 2016, at Olympia, Washington.

  
\_\_\_\_\_  
DIANE GRAF, Legal Assistant

