

**FILED**

**JUL 25 2014**

**SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK**

**EXPEDITE** (if filing within 5 court days of hearing)

No hearing is set.

Hearing is set:

Date: June 13, 2014

Time: 9:00 a.m.

Judge/Calendar: Honorable Christine Schaller

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,

Plaintiff,

v.

GROCERY MANUFACTURERS  
ASSOCIATION,

Defendant.

No. 13-2-02156-8

**ORDER DENYING IN PART AND  
GRANTING IN PART GMA'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS UNDER CR 12(c)**

**[PROPOSED]**

GROCERY MANUFACTURERS  
ASSOCIATION,

Plaintiff,

v.

ROBERT W. FERGUSON, Attorney  
General of the State of Washington, in his  
official capacity,

Defendant.

No. 14-2-00027-5

THIS MATTER having come before the Court on June 13, 2014 on Plaintiff Grocery  
Manufacturers Association's ("GMA") Motion for Judgment on the Pleadings under CR  
12(c), is DENIED in part and GRANTED in part for the reasons stated on the record. The

[PROPOSED] ORDER DENYING IN PART  
AND GRANTING IN PART JUDGMENT ON  
THE PLEADINGS UNDER CR 12(c) - 1

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1 Court's oral ruling explaining its reasoning is attached to this Order and incorporated herein  
2 (Attachment A). At the hearing, GMA was represented by Michael K. Ryan and Aaron  
3 Millstein of K&L Gates, LLP; and the State of Washington and Robert W. Ferguson were  
4 represented by Linda A. Dalton, Senior Assistant Attorney General and Callie A. Castillo,  
5 Assistant Attorney General.

6 The Court having considered the argument of counsel, together with the pleadings in  
7 the court file:

8 Now, therefore, IT IS HEREBY ORDERED:

9 1. GMA's motion is GRANTED as to the Third Claim in its complaint in Case  
10 No. 14-2-00027-5 and the Third Claim in its Counterclaim in Case No. 13-2-02156-8; RCW  
11 42.17A.442 is declared unconstitutional under the First and Fourteenth Amendments to the  
12 United States Constitution as applied to ballot measure committees;

13 2. GMA's motion is GRANTED as to the State's claim against GMA in Case No.  
14 13-2-02156-8 based on the violation of RCW 42.17A.442; while that claim is hereby  
15 DISMISSED with prejudice, this does not constitute a final judgment pursuant to Civil Rule  
16 54(b); and

17 3. GMA's motion is otherwise DENIED in all other respects.

18 DONE ~~IN OPEN COURT~~ this 25 day of July, 2014.

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22 JUDGE CHRISTINE SCHALLER  
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Presented by:

K&L GATES LLP

By: 

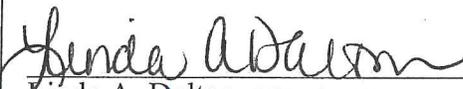
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*Attorneys for Grocery Manufactures Association*

**Copy received, approved as to form and content, notice of  
Presentation waived:**

STATE OF WASHINGTON



Linda A. Dalton, WSBA #15467  
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Assistant Attorney General  
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[PROPOSED] ORDER DENYING IN PART  
AND GRANTING IN PART JUDGMENT ON  
THE PLEADINGS UNDER CR 12(c) - 3

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# **Attachment A**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

---

STATE OF WASHINGTON,     )  
                                  )  
          Plaintiff,         )  
                                  )  
          vs.                 ) SUPERIOR COURT NO. 13-2-02156-8  
                                  )  
GROCERY MANUFACTURERS    )  
ASSOCIATION,                )  
                                  )  
          Defendant.         )

---

THE HONORABLE CHRISTINE SCHALLER PRESIDING

---

Ruling on CR 12(c) motion  
June 13, 2014  
2000 Lakeridge Drive SW  
Olympia, Washington

Court Reporter  
Ralph H. Beswick, CCR  
Certificate No. 2023  
1603 Evergreen Pk Ln SW  
Olympia, Washington

A P P E A R A N C E S

For the Plaintiff: Linda A. Dalton, AAG  
PO Box 40100  
Olympia, WA 98504-0100

For the Respondent: Michael Ryan  
K&L Gates  
925 4th Avenue, Suite 2900  
Seattle, WA 98104-1158

\*\*\*\*\*

1  
2 THE COURT: Please be seated.

3 This matter has come before the court on the Grocery  
4 Manufacturers Association's motion pursuant to CR 12(c) as  
5 a motion to dismiss. I'm going to refer to the Grocery  
6 Manufacturers Association as GMA for the purposes of my  
7 ruling, and I'm going to refer to the state as the state.

8 And there are three issues that were posed by GMA, and  
9 I'm going to use the issue statements as they posed them as  
10 I make my ruling in this matter. As was argued to the  
11 court and as I needed to frequently remind myself as I  
12 reviewed all of these materials and sought to analyze them,  
13 this is a motion pursuant to CR 12(c), and based upon that  
14 rule, the court is to accept the facts as presumed true,  
15 and that the court should grant dismissal only if there  
16 were no facts which would entitle a party to relief. I may  
17 only consider the facts in the complaint, except the court  
18 also has the ability to take judicial notice of public  
19 documents if authenticity cannot be reasonably disputed and  
20 documents whose contents are alleged in the complaint but  
21 which are not attached. The motion must be construed in  
22 the light most favorable to the nonmoving party.

23 In this case GMA, which is a trade association of food  
24 and beverage companies which has been in existence for a  
25 long time, over a hundred years, they made some decisions

1 that ultimately led them to bring some funds into  
2 Washington State and ultimately led to this litigation. In  
3 December of 2010 there was a direction in GMA research, and  
4 they made some conclusions based upon their research -- and  
5 the research started in December of 2010 -- about the  
6 campaign here in the state of Washington, I-522, Initiative  
7 522. Ultimately they determined that they would contribute  
8 funds into the state of Washington as it related to this  
9 campaign. They had created a fund called the Defense of  
10 Brands Strategic Account. They created that account for  
11 multiple reasons, and ultimately millions of dollars came  
12 into the state of Washington as it relates to I-522 to  
13 fight that initiative during and up until the election.

14 The first challenge is: Does the state violate the US  
15 Constitution by regulating GMA as a political committee  
16 while not equally treating functionally identical  
17 membership associations? And the answer to that question  
18 is no. From the court's perspective, GMA has characterized  
19 the law as a speaker-based discrimination. The law is  
20 neutral and does not single out certain speakers for  
21 special burdens. Rather than focusing on speaker or  
22 content, the law focuses on conduct. The law is facially  
23 neutral and was not applied differently to GMA than to  
24 others.

25 GMA has primarily focussed its argument on an equal

1 protection claim, which in the context of disclosure law is  
2 intertwined with the First Amendment, and the court is  
3 applying the proper standard of exacting scrutiny to this  
4 challenge. To survive exacting scrutiny there must be a  
5 substantial relation between the disclosure requirement and  
6 a sufficiently important governmental interest. To  
7 withstand the scrutiny, the strength of the governmental  
8 interest must reflect the seriousness of the actual burden  
9 on First Amendment rights. Although GMA has argued that it  
10 has been treated differently than organizations which it  
11 says it's similar to, such as the Natural Products  
12 Association Northwest, I do not find that for the purposes  
13 of the matter before the court, again, specifically  
14 relating to the issue of conduct.

15 The issue as to the expectation standard, which the  
16 court must consider, is meant to prevent owners from  
17 shielding their identities and using a third-party  
18 organization to funnel contributions. If a donor  
19 contributed to an organization that did not at the time  
20 expect to use the money for a particular campaign, then  
21 there is no such risk that the donor was trying to  
22 circumvent the disclosure laws.

23 The Court of Appeals has held that the state has a  
24 substantial interest in promoting integrity and preventing  
25 concealment that could harm the public and mislead voters.

1 Here, there is a sufficiently important governmental  
2 interest of prohibiting circumvention of campaign finance  
3 disclosures and the requirement relating to the  
4 expectations of how contributions will be used is  
5 substantially related to the government interest, and in  
6 this way the law has not been unconstitutionally applied to  
7 GMA.

8 GMA has argued and asked the question: Are Washington's  
9 disclosure laws as applied unconstitutional because GMA  
10 could have safely participated in the state's political  
11 process only by disclosing millions of dollars of  
12 non-Washington, non-electoral transactions and no  
13 legitimate state interest in informing Washington voters  
14 about Washington elections supports this burden? The  
15 answer to that question is no.

16 GMA's argument is that the disclosure requirements are  
17 unconstitutional because it will need to disclose  
18 information that is not related to the I-522 campaign and  
19 because disclosure would be required before it had actually  
20 contributed to that campaign or committed itself to doing  
21 so. There are many factual allegations that GMA has made  
22 for the purposes of this motion from the court's  
23 perspective that are not appropriate in a CR 12(c) motion.  
24 It argues that it would be impossible for it to know from  
25 the outset how much it would contribute to the No on 522

1 campaign, it would be required to over-report donations,  
2 and the campaign disclosure laws necessarily and  
3 unconstitutionally require it to report information that  
4 has no relation to Washington politics. As I've talked  
5 about, the facts must be taken in the light most favorable  
6 to the state. The allegation in the complaint and/or  
7 amended complaint must be viewed as true, and the court is  
8 to consider and can consider hypothetical facts as well.

9 The first amended complaint alleges that GMA researched  
10 how much money it should devote to oppose I-522, and it  
11 concluded that \$10 million should be allotted to the  
12 effort. It created a fund called the Defense of Brands  
13 Strategic Account for multiple purposes, including fighting  
14 the GMO labeling ballot measures. GMA has assessed its  
15 members with dues for the No on 522 opposition, among other  
16 efforts, and ultimately deposited over \$13 million in the  
17 Defense of Brands Strategic Account. GMA kept its members  
18 informed about the No on 522 campaign. From that account  
19 it has contributed millions of dollars on the No on 522  
20 campaign, and only after this occurred did it register as a  
21 political committee and disclose the contributions.

22 GMA's argument is based on its version of facts, not the  
23 facts taken in the light most favorable to the state. GMA  
24 does not explain how the law is unconstitutional as applied  
25 in light of its choice to comingle the funds despite clear

1 reporting requirements. The law does not require  
2 disclosure of funds that are unrelated to Washington  
3 politics as long as organizations register as a political  
4 committee and keep its accounts separate. GMA's broader  
5 records are only at issue because it did not report their  
6 millions of dollars in contributions in its capacity as a  
7 political committee.

8 This law is not over-broad. It has not been  
9 unconstitutionally applied to GMA, and as it relates to  
10 that portion of the motion, it is also denied as well as  
11 the first issue.

12 The last issue before the court is: Does Washington's  
13 ten-contributor law violate the First Amendment as it  
14 applies to ballot measure committees by conditioning  
15 political association on a group's gaining token support  
16 from ten registered Washington voters? And the answer to  
17 that question is yes.

18 RCW 42.17A.442 provides that a political committee may  
19 make a contribution to another political committee only  
20 when the contributing political committee has received  
21 contributions of ten dollars or more each from at least ten  
22 persons registered to vote in Washington State. This law  
23 was enacted in 2011, became effective January 1, 2012. And  
24 it was, as was argued, a direct response to a situation  
25 which occurred in 2010 wherein a political consultant for a

1 state senate race created a series of sham political  
2 committees and made contributions between them to hide the  
3 true source of funds for advertisements. And in the end,  
4 that candidate who benefited from the deceptive practice  
5 won. And though today I am ruling in favor of GMA as it  
6 relates to this law and I believe that their position is  
7 correct, it is not in any way a reflection on this court's  
8 thought about what the legislature was trying to do and why  
9 they were trying to do it. I simply find that the law as  
10 written is unconstitutional.

11 After the incident in 2010, the legislature wanted to  
12 make it more difficult to conceal the true source of funds  
13 by using sham political committees to contribute to other  
14 committees, and that is when RCW 42.17A.442 was created.  
15 It is argued that this law increases transparency, prevents  
16 recurrence of the problem that occurred in 2010 and sheds  
17 daylight on organizations trying to simply move money from  
18 one organization to another. If that is what the statute  
19 is supposed to do, it raises several questions. How will  
20 the recruitment of ten extremely small donors prevent or  
21 even reduce the existence of sham political committees? It  
22 doesn't seem difficult to obtain ten small contributors.  
23 That would hardly be a roadblock as the state has argued.

24 One of the most important and troubling questions in the  
25 court's mind, however, is why must these contributors be

1 registered Washington voters? The state did not and cannot  
2 articulate a reason for this classification. The law at  
3 issue here distinguishes among different speakers. It also  
4 treats political speech of natural persons differently than  
5 that of corporations. It requires support of ten natural  
6 persons who are also Washington voters before a campaign  
7 contribution can be exchanged from one political committee  
8 to another.

9 This discriminates in a manner that violates the First  
10 Amendment. This was as expressed in *Citizens United versus*  
11 *the Federal Elections Commission*. Quoting from that case,  
12 "Premised on mistrust of governmental power, the First  
13 Amendment stands against attempts to disfavor certain  
14 subjects or viewpoints.... Prohibited, too, are  
15 restrictions distinguishing among different speakers,  
16 allowing speech by some but not others.... Quite apart  
17 from the purpose or effect of regulating content, moreover,  
18 the government may commit a constitutional wrong when by  
19 law it identifies certain preferred speakers. By taking  
20 the right to speak from some and giving it to others, the  
21 government deprives the disadvantaged person or class of  
22 the right to use speech to strive to establish worth,  
23 standing and the respect for the speaker's voice." It goes  
24 on to further state, "The court has recognized that First  
25 Amendment protection extends to corporations.... The court

1 has thus rejected the argument that political speech of  
2 corporations or other associations should be treated  
3 differently under the First Amendment simply because such  
4 associations are not 'natural persons.'"

5 But moreover, this law also implicates the freedom of  
6 association. GMA may not make a particular form of  
7 contribution unless it associates politically with ten  
8 Washington voters. The United States Supreme Court held  
9 that mandatory associations are permissible only when they  
10 serve a compelling state interest that cannot be achieved  
11 through means significantly less restrictive of  
12 associational freedoms. While the mandatory associations  
13 at issue in those cases involved comprehensive regulatory  
14 schemes that are much different than the case before the  
15 court in which GMA could merely opt out and then decline to  
16 contribute to the No on 522 campaign, such forced  
17 associations regarding political speech should be closely  
18 scrutinized.

19 It has been argued as it relates to the test for  
20 evaluation that "A campaign contribution limitation is  
21 'closely drawn' if it focus[es] on the narrow aspect of  
22 political association where the actuality and potential for  
23 corruption have been identified -- while leaving persons  
24 free to engage in independent political expression, to  
25 associate actively through volunteering their services, and

1 to assist in a limited but nonetheless substantial extent  
2 in supporting the candidates and committees with financial  
3 resources." And that comes from the *Montana Right to Life*  
4 *Association versus Eddleman* case.

5 But this test cannot be met in this situation. This law  
6 does not focus on the narrow aspect of political  
7 association at issue because it does not prohibit sham  
8 political committees; it merely requires a larger group of  
9 contributors. It does not leave persons free to engage in  
10 independent political expression because it mandates  
11 association rather than independence, and it mandates the  
12 categories in which those associations must belong. Based  
13 upon all of this, I find that RCW 42.17A.442 as it applies  
14 to ballot title measure committees is unconstitutional.

15 So I don't know if the parties anticipate presenting  
16 orders today. I presume not. But I will leave it to you  
17 to address that issue, and if you cannot present orders  
18 today, and if there's not agreement, you can re-note it on  
19 any Friday.

20 MR. RYAN: I have a quick question. I saw you were  
21 reading from something. Do you intend to issue some type  
22 of letter ruling?

23 THE COURT: No. That's why I ruled in open court.

24 MR. RYAN: Okay. Thank you, Your Honor.

25 THE COURT: Thank you.

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MS. DALTON: Thank you, Your Honor.

THE COURT: Thank you.

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## CERTIFICATE OF REPORTER.

STATE OF WASHINGTON    )  
                                  ) ss.  
COUNTY OF THURSTON    )

I, RALPH H. BESWICK, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter as designated by Counsel to be included in the transcript and that the transcript is a true and complete record of my stenographic notes.

Dated this 23rd day of June, 2014.

---

RALPH H. BESWICK, CCR  
Official Court Reporter  
Certificate No. 2023