

Foodmakers to argue Washington's \$18M fine unconstitutional

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The packaged food and drink industry will try to persuade a Washington state appeals court next week that exercising its First Amendment rights required withholding the names of the companies that spent \$11 million to defeat a 2013 initiative that would have required labels on food with genetically modified ingredients.

The Grocery Manufacturers Association argues that funneling the contributions through the trade association shielded companies from boycotts and even death threats, like the ones their members suffered for opposing a similar GMO proposition in California the year before.

“As applied to GMA, the (disclosure law in Washington) strikes at the First Amendment’s most important protection: the right to advocate controversial political views,” foodmakers argue in a brief to the Court of Appeals in Tacoma.

GMA is appealing a record-breaking \$18 million fine handed down in 2016 by Thurston County Superior Court Judge Anne Hirsch. Hirsch ruled that GMA intentionally broke the law by belatedly naming the companies that contributed to the “No on Initiative 522” campaign.

The penalty is by far the largest ever levied in the U.S. for not reporting political activities. The next-biggest fine, \$3.8 million, was levied by the Federal Elections Commission in 2008 against the Federal Home Loan Mortgage Corp.

Hirsch also awarded the attorney general’s office more than \$1 million, bringing the total judgment against GMA to more than \$19 million.

In addition, GMA argues the penalty is unconstitutionally excessive, violating the Eighth Amendment. GMA claims it believed it was complying with Washington law and that voters were not misled about the source of the money.

GMA, under fire from state regulators, named the companies shortly before the election. Leading contributors included companies such as PepsiCo, Nestle USA, Coca-Cola, General Mills and ConAgra Foods. I-522 was defeated with 51 percent of the vote.

Hirsch embraced the Washington attorney general's claim that sophisticated GMA executives schemed to distance brand-name companies from another bruising campaign over labeling products with ingredients derived from genetically modified organisms.

Duke University professor Michael Munger and University of Missouri professor Jeffrey Milyo, a senior fellow at the Cato Institute, filed a brief supporting GMA's First Amendment argument.

"Members of associations have a core right under the First Amendment to engage in political speech without disclosing their identity in a way that will subject them to potential threats, retaliation and boycotts," wrote the professors, both economists.

The state argues that GMA wasn't punished for speaking up, but for concealing who was funding it.

The three-judge appeals court, convening outside its normal venue, will hearing oral arguments in a 30-minute hearing May 24 at Rogers High School in Puyallup.

In a similar case, the anti-GMO organization Food Democracy Now has appealed a \$319,281 fine for failing to name donors who contributed to the "yes" on I-522 campaign. The appeals court will hear oral arguments in that case June 25 in Tacoma.