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NO. 96578-1

SUPREME COURT OF THE STATE OF WASHINGTON

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 925, a
labor organization,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF EARLY LEARNING,
a state agency, and EVERGREEN FREEDOM FOUNDATION, a non-
profit corporation,

Respondents.

**ANSWER TO PETITION FOR REVIEW BY
THE SUPRMEME COURT**

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I. INTRODUCTION

The Freedom Foundation (the Foundation) submitted a public record request to the Department of Early Learning (the Department)¹ asking for the names, mailing addresses, and email addresses for all licensed and license exempt family child care providers. The Department determined that no statutory exemption prevented release of the requested information and that it should be released. It then notified the child care providers' bargaining representative, Service Employees International Union Local 925 (SEIU 925), that the information would be released unless prevented by a timely court order. SEIU 925 sought and was denied a preliminary injunction and a temporary restraining order preventing release of responsive records.

SEIU 925 then filed this appeal. The central issue on appeal is whether this public record request is governed by two sections of Initiative 1501 (I-1501) (codified in RCW 42.56.640 and RCW 43.17.410). These statutes, if applicable, would prevent release of the requested information. However, these statutes were not in effect when the Department received

¹ The Department of Early Learning became the Department of Children, Youth, and Families on July 1, 2018, during the pendency of this case. Laws of 2017, 3d Spec. Sess., ch. 6.

the public record request and determined that the requested information must be released.

The Court of Appeals held that the Department must apply the law that was in effect when the Foundation made its public record request, and that I-1501 does not apply retroactively. It affirmed the trial court's order denying an injunction.

The Department takes no position as to whether this Court should grant the petition for review and stands ready to release the requested information when directed or permitted to do so.

II. ISSUES PRESENTED FOR REVIEW

If the Court grants review, two issues would be presented:

1. Did the Court of Appeals correctly determine that the statutes established by I-1501 did not apply retroactively?
2. Did the Court of Appeals correctly determine that, when a statute affecting the disclosure of records is amended after a party has made a records request, the controlling law is the law in existence at the time the request was made?

III. STATEMENT OF FACTS

Washington State subsidizes child care expenses of qualified low-wage working families. RCW 43.215.020, .135, .495 (Recodified as RCW 43.216.020, .135, .495). The State offers subsidies to qualified families for child care through several programs, the largest of which is the Working Connections Child Care (WCCC) Program. RCW 43.215.135

(Recodified as RCW 43.216.135); WAC 170-290-0001 to -0240 (Recodified as WAC 110-15-0001 to -0240). The Department (now DCYF) administers the WCCC Program.

Child care in Washington State is provided in two different care settings, child care centers and in-home child care. CP 904. Child care centers are commercial operations (for profit or not-for-profit) that hire staff and are usually located in a building or school other than a private residence or in a faith-based space. *Id.* Child care center provider information is not at issue in this case.

In-home child care is provided by family child care providers, usually in the provider's residence or in the child's own home. WAC 170-296A-0010 (Recodified as WAC 110-300B-0010); CP 904. Family child care providers can be either licensed or licensed-exempt. CP 904-05. SEIU 925 represents all family child care providers—both licensed and licensed-exempt providers,—for purposes of collective bargaining with the State. RCW 41.56.028.

On November 2, 2016, Foundation employee Maxford Nelson made a request under the Public Records Act (PRA) to the Department for two records. The first was for a list containing the first name, last name, work mailing address, and work email address of all licensed family child care providers, as defined by RCW 41.56.030(7). CP 909. The second was for a

similar list but for license-exempt family child care providers. *Id.* CP 909-10. On November 4, 2016, the Department notified the SEIU 925 that it intended to release the provider lists on November 22, 2016, unless the SEIU 925 produced a court order enjoining disclosure. CP 912-13. On November 16, 2016, SEIU 925 filed a Complaint for Declaratory and Injunctive Relief Under Public Records Act to enjoin release of the records, as well as a motion for a Temporary Restraining Order to prohibit release. CP 5-14, 257-72. Both motions were heard on December 9, 2016.²

Meanwhile, six days after the Foundation filed its public record request, the voters approved I-1501 at the 2016 general election. *See* Governor's Proclamation re I-1501 (Dec. 7, 2016). I-1501 took effect the day before the hearing on the motions. *See* Laws of 2017, ch. 4. I-1501 includes two new sections of law relevant herein: Section 8, codified as RCW 42.56.640; and Section 10, codified as RCW 43.17.410. Those sections exempt from public disclosure "sensitive personal information of in-home caregivers for vulnerable populations," and relevant terms are

² A superior court commissioner heard arguments on SEIU 925's motion for a TRO but did not rule on the motion. Instead, the commissioner asked the Foundation and the Department to refrain from releasing the records on November 22, and to schedule a hearing on SEIU 925's request for a preliminary injunction as soon as possible. The parties agreed. *See SEIU 925 v. Dep't of Early Learning*, No. 49726-3-II, slip op. at 5 (Sep. 18, 2018).

defined to specifically include the names, addresses, and email addresses of family child care providers within the exemption.

At the close of the December 9, 2016, hearing, the trial court denied the SEIU 925's requests for a preliminary injunction but continued the temporary restraining order to allow SEIU 925 an opportunity to file an appeal. Verbatim Report of Proceedings at 39-56. These rulings were memorialized in a written order entered that day. CP 967-68. SEIU 925 timely appealed to the Court of Appeals, which, on September 18, 2018, issued its unpublished decision affirming the trial court's ruling that the relevant portions of I-1501 did not apply retroactively. *SEIU 925 v. State of Wash., Dept. of Early Learning*, No. 49726-3-II (September 18, 2018). SEIU 925 now seeks discretionary review by this Court.

IV. ARGUMENT

SEIU 925 argues that the Court of Appeals' unpublished decision in the instant case conflicts with two other Court of Appeals' decisions, one unpublished and one published. It additionally argues that this case involves matters of substantial public interest that should be reviewed by this Court. The Department takes no position on those arguments and whether review is warranted under RAP 13.4(b). Should this Court accept review, the Department may exercise its option under RAP 10.1(b)(2) to file a supplemental brief on the merits.

In either event, the Department remains ready to release the requested records when permitted or directed to do so by the Court.

V. CONCLUSION

The Department of Children, Youth, and Families does not take a position as to whether this Court should accept review of the Court of Appeals' decision. The Department remains ready to release the requested records when permitted or directed to do so by the Court.

RESPECTFULLY SUBMITTED this 28 day of December, 2018.

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

DATED this 28 day of December, 2018, at Olympia, WA.



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WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL

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