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IN THE COURT OF APPEALS, DIVISION I  
THE STATE OF WASHINGTON

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ROGER TODD BUCKNER,

Appellant/Petitioner

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE  
STATE OF WASHINGTON,

Respondent.

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PETITION FOR REVIEW BY  
THE WASHINGTON SUPREME COURT

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**APPENDIX A**

**Unpublished Opinion** Court of Appeals Division I  
*Roger Todd Buckner v. Washington State Department of Labor and Industries* dated October 11, 2021 ..... A.001-A.010

**A. INTRODUCTION AND IDENTITY OF PETITIONER**

The Petitioner is Roger Todd Buckner (“Buckner”), an individual who is alleged to have performed electrical work on one occasion without the required electrical contractor license and certificate of competency. Buckner asks this Court to accept review the Court of Appeals’ decision which affirmed the Superior Court’s entry of order affirming the decision of the Washington State Department of Labor and Industries (“Department”) to that Buckner’s appeal was untimely.

This case raises important issues regarding due process when the Respondent, the Department of Labor and Industries (“Department”) uses a subscription service that searches public records called Accurint to identify an address for Buckner which is then used as his “last known address” for mailing citations as permitted under RCW 19.28.131 because the Department did not know his address.

**B. COURT OF APPEALS DECISION**

Buckner seeks review of *Roger Todd Buckner v. Washington Department of Labor and Industries*, No. 82155-5-I, filed on October 11, 2021 [currently unpublished]. A copy of the opinion is attached to this Petition for Review at Appendix A, pages A.001 through A.010.

**C. ISSUES PRESENTED FOR REVIEW**

1. Does the Department’s use of a subscription service like Accurint to identify an address to which to mail citations of alleged violations under Chapter 19.28 RCW when the Department does not know the individual’s address violate that individual’s right to due process?

2. Does the Department's reliance upon a subscription service like Accurant to identify an address of an alleged violator of Chapter 19.28 RCW constitute compliance with RCW 19.28.131 and WAC 296-46B-995 and serve the public purposes of Chapter 19.28 RCW?

#### **D. STATEMENT OF THE CASE**

##### **1. Statement of Facts**

The Department Electrical Inspector/Compliance Officer Joaquin Perez issued citations EPEJP01166 and EPEJP01168 on or about November 1, 2019. (CADR P 11 and 14)<sup>1</sup>. Citations EPEJP01166 and EPEJP01168 alleged violations of RCW 19.28.161, requiring electrical construction contractors to have a certificate of competency, and RCW 19.28.041, requiring electrical construction contractors to have an unrevoked, unsuspended, and unexpired electrical contractor license. CADR pp 11-16. The alleged violations allegedly occurred almost two years earlier on or about January 28, 2018. *Id.* The citations assess penalties of \$250.00 and \$1,000.00, respectively. *Id.*

Buckner is not now, nor has he ever been, an electrical construction contractor. Clerk's papers, p 42, *Trial Brief*, Exhibit 1, *Declaration of Todd Buckner* (hereinafter "BUCKNER"), p 3. Buckner never performed any electrical work as alleged in the citations. *Id.* Buckner never advertised nor offered to perform any electrical work as alleged in the citations. *Id.*

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<sup>1</sup> The Certified Appeal Department Record ("CADR") is referenced in the Clerk's Papers. References throughout this brief will be contained in the CADR. The Transcripts are referenced and supplemented to the CADR. The transcripts will be referred to by "Tr." with the date and page number(s).

Notices of each citation were mailed, certified, return receipt requested, to:

ROGER BUCKNER  
7683 SE 27TH ST APT 414  
MERCER ISLAND WA 98040

on or about November 7, 2019. CADR pp 12-13; 15-16; 19; 21; 23-24; 26-27.

The Department did not have an address on record for Buckner. Clerk's papers, p 82, *Department's Response Brief*, Attachment A, *Declaration of Bethany Rivera* (hereinafter "RIVERA"), p 2. The Department located the address for the UPS Store on Mercer Island by somehow "[using] a service known as Accurint." *Id*; Clerk's papers, p 84, RIVERA p 4, *Department's Response Brief*, Exhibit A to Attachment A, p 2. The Department also "found two SS#s for Buckner." *Id*. While the Department verified the address for a contractor who was also implicated in this work, "V & S", "Address: Verified V & S with the company owner", the Department never verified the address for Buckner. *Id*.

Buckner did not receive notice of the citations until November 15, 2019. Clerk's Papers, p 41, BUCKNER 2. Buckner then took methodical steps to ensure he understood his rights. Clerk's Papers, 41-42, 45-53, BUCKNER 2-3, 7-15. He made repeated contacts with the Department to get all the information he could. *Id*. And then once he had confirmed exactly what was required by the Department he relied upon his communications with the Department and filed his appeal correctly and timely. Clerk's Papers, 54-68, BUCKNER 16-30.

He received the citations on Friday, November 15, 2019, and on Tuesday, November 19, 2019 he telephoned and informed the Department of his intent to appeal the citations. Clerk's Papers, p 41, BUCKNER 2. He confirmed with Inspector Perez the process and timeline that he needed to follow. *Id.*

He followed up that telephone call with an email confirming and documenting his telephone call. Clerk's Papers, p 46-47, BUCKNER 8-9.

Buckner's email says, "I informed you that it was my understanding that I had 20 days to file an appeal with the Department of Labor and Industries, commencing the 20-day count on the 15<sup>th</sup> of November 2019. It was my understanding that you agreed with me." ... "It is my understanding that I have until December 5, 2019, commencing Friday, November 15, 2019 + 20 days, including weekends and the Thanksgiving holiday to submit my appeal request." Clerk's Papers, p 46, BUCKNER 8. Buckner continues in his email with a request for a two phased process for his appeal, closing with "Please know that I believe it is paramount that I respond to the Department of Labor and Industries fully and transparently and at no time do I want to violate any law in our great state. I respectfully ask that you confirm the accuracy of the above or correct me where inaccurate. I also ask that you grant my request to have a 2-part response." Clerk's Papers, p 47, BUCKNER 9.

On November 21, 2019 he received a response email from Inspector Perez, and Buckner responded the same day. Clerk's Papers, p 49-53, BUCKNER 11-15. He asked questions and received answers. *Id.* One

question Buckner asked was for an email address for the electrical citations desk. Clerk's Papers, p 50, BUCKNER 12. "Does the department you are referring me to (the Electrical Infraction Desk) have an email that I can use to contact them?" *Id.* Mr. Perez says, "No sir." *Id.* However, the Electrical Citations Desk does have an email: [electricalcitations@lni.wa.gov](mailto:electricalcitations@lni.wa.gov).

Inspector Perez never denies Buckner's understanding of the due date for his appeal. *Id.* Inspector Perez says, "You do not need my permission to respond that is your right. However, you will need to address this according to the instructions sent out with the Infractions - the Electrical Section at L & I is who you need to contact and appeal to, not me." *Id.* And in response to Buckner's request for contact information for the Electrical Section, Inspector Perez provides Buckner a phone number. Clerk's Papers, p 49, BUCKNER 11.

Buckner then telephoned the electrical citations desk to double check and reconfirm that he understood the process correctly. Clerk's Papers, p 41, BUCKNER 3. Again, Buckner cannot document this with email communication because the Department withheld the email address. By withholding the email address, Bethany Rivera can declare, "I have reviewed the computer system and there are no entries with Buckner prior to his late appeal." Clerk's Papers, 82, RIVERA 2.

He filed his appeal by delivering it to the Bellevue office, a process that he had confirmed was acceptable with the Department electrical citations desk and with the Bellevue office. Clerk's Papers, p 42, BUCKNER 4. The Bellevue office accepted his cashier's check and stamped his appeal "received." Clerk's Papers, p 55, BUCKNER 17.



Buckner acknowledged receipt of the citations on December 5, 2019. Clerk's Papers, p 57 and 60, BUCKNER 19 and 22. The Department failed to provide a complete copy of Buckner's appeal in the Certified Agency Record. Clerk's Papers, p 81-82, RIVERA 1-2; Compare CADR p 10 – 18 to Clerk's Papers, 56 – 67, BUCKNER 18 – 29. The missing pages from the Certified Agency Record include the part of Buckner's email in which he expressly states when he received the citations. *Id.*

Per USPS.com, one of the notice letters, tracked as No. 9489009000276093312897, was delivered to 7683 SE 27<sup>th</sup> Street, Mercer Island, WA 98040 on November 12, 2019, 10:52 am. CADR p 22. The record does not indicate whether the letters were sent together, or whether the tracking for the other letter is not included.

7683 SE 27<sup>th</sup> Street, Mercer Island, WA 98040 is the address of a The UPS Store location where Buckner rents a personal mailbox, box number 414. Clerk's Paper's p 40, BUCKNER 2. This address is not the residence of Buckner. *Id.*

Buckner did not sign for any certified letter from the Department. *Id.* The certified letter was signed by "MYSTI" at the "Front Desk/Reception/Mail Room" for The UPS Store. CADR P 22.

Neither the notice of citation EPEJP01166, nor notice of citation EPEJP01168 were actually received by Buckner until November 15, 2019. Clerk's Papers, p 41, BUCKNER 2. The notice of each citation stated, "**Within 20 calendar days of receiving this letter, you must:**" either "**Pay**" or "**File an appeal**". CADR pp 12 and 15, 23 and 26

## **2. Procedural Background**

On December 5, 2019 Buckner appealed both citations. CADR 10 – 18. On or about December 19, 2019 the Department summarily denied Buckner’s appeal finding “Appeal not received within 20 days of service of the citation.” CADR 7. The Department did not address the merits of the citations.

On January 6, 2020, Buckner timely filed appeal to King County Superior Court. CADR 5-6. On October 16, 2020, the Honorable Catherine Shaffer of King County Superior Court signed Findings of Fact and Conclusions of Law and Judgment affirming the Department’s denial of Buckner’s appeal. Clerk’s Papers 130-134. On October 26, 2020, Buckner timely filed a motion for reconsideration. Clerk’s Papers 140-155. On November 3, 2020, Judge Shaffer denied Buckner’s motion for reconsideration. Clerk’s Papers p 156-158. The Superior Court did not address the merits of the citations.

On December 1, 2020, Buckner timely filed appeal to the Court of Appeals.

### **E. ARGUMENT**

RAP 13.4(b) states a petition for review will be accepted if the petition involves a significant question of law under the Constitution of the State of Washington or of the United States or if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Both are the case here.

**1. The Supreme Court should accept this petition for review because it involves a matter of substantial public interest.**

Chapter 19.28 RCW exists to permit the Department to “safeguard the public from dangerous electrical installations and unscrupulous electrical contractors” and “provide assurances that individuals performing the inherently dangerous task of electrical work are trained and competent.” *Nat’l Elec. Contractors Ass’n, Cascade Chapter v. Riveland*, 138 Wn.2d 9, 17, 21-22, 978 P.2d 481 (1999). “Compliance with RCW 19.28 ensures that electrical work is performed safely and competently.” *Id.* Therefore, whether the Department’s procedures in its enforcement of Chapter 19.28 RCW are reasonably calculated to actually provide notice to those allegedly violating such regulations is of substantial public interest.

RCW 19.28 authorizes the Department to issue citations and assess penalties against electrical contractors with the purpose of assuring compliance with RCW 19.28. However, when the Department merely mails out citations without knowing whether or not anyone will receive them, in addition to violating the due process rights of the individuals, the Department fails to promote the public interest in ensuring compliance with RCW 19.28. If the purpose of such citations is to actually address electrical contractors who are working without license, ensuring such alleged violations actually reach those individuals is essential. Permitting the Department to mail citations to addresses without first verifying the address serves no such purpose. (Note: The Department did verify the address of the known contractor V&S who had provided the Department with a “last known address”, but with Buckner, where the Department did not have a

“last known address”, the Department took no steps to verify the address it found on Accurint.) When the Department ensures actual notice is provided and permits appeal of such alleged violations on the merits, the public interest is served, because only when alleged violators are actually given notice is it possible for the Department to actually ensure compliance with RCW 19.28.

Furthermore, this Petition will determine whether Buckner and the Department are given the opportunity to appeal the underlying citations on their merits. The Department has argued repeatedly that Buckner is somehow “seeking to create a technicality to escape laws that protect life and property”, but nothing could be further from the truth. The record is filled with evidence that Buckner merely wanted his day in court to prove he did not violate these regulations. Buckner is not hiding or looking for a technicality. It is in fact the Department which is relying upon a technicality to deny Buckner his day in court. Only by addressing the merits will the Department have an opportunity to address compliance with RCW 19.28.

**2. The Supreme Court should accept this petition for review because it involves a significant question of law under the Constitution of the State of Washington or of the United States; Due Process.**

The Department and the Courts below in this case rely heavily upon the fact that these citations did actually reach Buckner. They point again and again to the evidence that he contacted the Department repeatedly and attempted to timely appeal them. However, in order for the Department’s use of the public database known as Accurint without any other verification

to mail citations to constitute due process, it must be considered reasonably calculated to provide notice and an opportunity to be heard whether or not the citations are ever received. To determine whether due process is provided it is perhaps more important to consider when such notice is not actually received.

“Due process does not require that a property owner receive actual notice before the government may take his property.” *Jones v. Flowers*, 547 U.S. 220, 226, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006). Instead, notice must be reasonably calculated, under all the circumstances, to notify interested parties of the action and give them an opportunity to be heard. *State v. Nelson*, 158 Wn.2d 669, 703, 147 P.3d 553 (2006).

In essence the Department’s argument, and the holdings of the Courts below, is that mailing a RCW 19.28.131 citation to an address located by a Department employee using a subscription service like Accurant, without providing any evidence that such service is reliable or accurate, whether or not the recipient ever receives it, and without relying upon the Department’s customary process to verify the accuracy of a registered contractor’s address, affords that alleged violator due process; that such a process is a reasonable interpretation of RCW 19.28.131 requiring mailing to the “last known address” and is reasonably calculated to give an ordinary individual like Buckner notice and an opportunity to be heard.

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In considering the Mathews factors, the Appellate Court reasons the government's "interest in enforcing chapter 19.28 RCW is to protect public health and safety by 'ensur[ing] that electrical work is performed safely and competently.'" *Riveland*, 138 Wn.2d at 22. Buckner offers no alternative procedure her, with the implication being that L&I cannot issue a citation to an individual unless they first supply their address to L&I. Because only registered contractors are required to supply their address to L&I, this would effectively prevent L&I from enforcing electrical safety standards in any case where an unlicensed individual is performing electrical work." However, WAC 296-46B-995 provides "The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party", so the Department's own regulations provide an alternative to mailing to an unknown address: personal service. The Department just chose not to follow its own regulations. Additionally, the Department has an unwritten process to verify the "last known address" for registered contractors like V&S, so the Department chose not to follow its own process for Buckner. And most importantly, mailing citations to unknown addresses is not reasonably calculated to enforce electrical safety standards anyway.

Picking an address from a database, without any other process to verify the accuracy of such address, is not reasonably calculated to provide actual notice and is not due process.

**F. CONCLUSION**

The Department and courts below erred by finding the use of a public records database is an appropriate substitute for knowing the appellant's address and that such process was reasonably calculated under the circumstances to provide notice and an opportunity to be heard. For the above reasons, Buckner's Petition for Review should be granted.

Respectfully submitted this 10th day of November 2021.

*s/ Sean Walsh*

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**CERTIFICATE OF SERVICE**

I certify that on November 10, 2021, I caused the original and copy of the **Petition for Review to Supreme Court** to be filed via Electronic Filing, with the Court of Appeals, Division I and that I further served a true and correct copy of same, on:

- (X) Via Hand Delivery to Supreme Court of Washington/Temple of Justice with Petition for Review filing fee check:**

Clerk of the Court  
Supreme Court  
Temple of Justice  
415 – 12<sup>th</sup> Avenue SW  
Olympia, WA 98504-0920

- (X) Via Court of Appeals Division I, Electronic Filing, Facsimile and U.S. Mail, Postage Prepaid:**

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DATED this 10<sup>th</sup> day of November 2021, in Lacey, Washington.

*s/ Donna Perkins*

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# **APPENDIX A**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROGER TODD BUCKNER,

Appellant,

v.

WASHINGTON DEPARTMENT  
OF LABOR AND INDUSTRIES,

Respondent.

No. 82155-5-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, J. — The Department of Labor and Industries (L&I) issued Roger Todd Buckner two electrical citations to his mailbox at a UPS Store. Because L&I did not have an address on record for Buckner, it used a service that searched public records to obtain his address. Buckner submitted his appeal late, and L&I denied the appeal as untimely. Buckner appeals, contending that L&I failed to send the citations to his “last known address” as required under RCW 19.28.131, that L&I procedure violated due process, and that L&I was estopped from denying his appeal. Because Buckner fails to establish that L&I did not follow appropriate and reasonable procedures, we affirm.

FACTS

In November 2019, L&I issued two citations to Roger Todd Buckner for performing electrical work without a license in violation of RCW 19.28.041 and RCW 19.28.161. L&I did not have an address on file for Buckner because he had never registered as an electrician, so it used a service called Accurant to

acquire his address. Accurint is a subscription service that searches public records to provide identifying information. L&I sent the citations to the address supplied by Accurint, which was for a mailbox at a UPS Store, which Buckner rents.

The citations informed Buckner that he had the right to appeal, and stated, “You must mail your appeal request letter to: Department of Labor and Industries, Attention Chief Electrical Inspector, PO Box 44460, Olympia, WA[ ] 98504.” They further specified, “The appeal letter and appeal fee must be received (not post marked) by Labor and Industries within 20 calendar days of your receiving this letter.”

L&I confirmed delivery of the citations to the UPS Store on November 12, 2019, which would make the appeal deadline December 2. However, Buckner did not collect the citations until November 15. On November 19, Buckner telephoned Joaquin Perez, the L&I compliance inspector who had issued the citations, and followed up with an e-mail to document the conversation. In his e-mail, Buckner stated that he understood that he had until December 5—or 20 days from his receipt of the letters on November 15—to submit his appeal, and that “[i]t was my understanding that [Perez] agreed with me.” Perez responded to the e-mail on November 21 and did not say anything regarding Buckner’s understanding of the timeline. Regarding the appeal, Perez stated, “[Y]ou will need to address this according to the instructions sent out with the infractions.”

On December 5, Buckner took his appeal to L&I’s Bellevue service location. Attached to his appeal, Buckner included printouts of his e-mails with

Perez and of e-mails regarding a public records request he had made to L&I. The Bellevue location copied and e-mailed the documents to the electrical citations department, which printed the appeal and brought it to the office of the chief electrical inspector on December 6. In the process of transmitting the appeal to the chief electrical inspector, L&I lost the last three pages of Buckner's appeal, including the public records e-mail exchange and most of his e-mail to Perez.

L&I denied Buckner's appeal as untimely on December 19. Buckner appealed to the superior court, which affirmed L&I's decision. Buckner moved for reconsideration, and the court denied the motion. Buckner appeals.

#### ANALYSIS

Buckner contends that L&I failed to send the citations to Buckner's "last known address" as required by RCW 19.28.131 because it did not "know" that the address supplied by Accurint was, in fact, Buckner's address. He also contends that L&I's notice and appeal procedures deprived Buckner of due process and that L&I was equitably estopped from denying Buckner's appeal. We disagree.

#### Standard of Review

We review L&I's decision under Washington's Administrative Procedure Act (APA), chapter 34.05 RCW. RCW 19.28.131. When reviewing an agency decision under the APA, this court sits in the same position as the superior court, and gives no deference to the superior court's findings. Darkenwald v. Emp't Sec. Dep't, 183 Wn.2d 237, 244, 350 P.3d 647 (2015). "The burden of

demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a). As relevant here, this court may reverse an order if it determines that “[t]he order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;” that “[t]he agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;” or that “[t]he agency has erroneously interpreted or applied the law.” RCW 34.05.570(3)(a), (c), (d). We review questions of law, including statutory interpretation and the constitutionality of a statute, de novo. Lake v. Woodcreek Homeowners Ass’n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010); Morrison v. Dep’t of Labor & Indus., 168 Wn. App. 269, 272, 277 P.3d 675 (2012). “A statute is presumed to be constitutional, and the party attacking a statute has the heavy burden of proving its unconstitutionality beyond a reasonable doubt.” Morrison, 168 Wn. App. at 272.

#### Compliance with the Statute

Buckner contends that L&I failed to comply with the requirement, under RCW 19.28.131 and WAC 296-46B-995, that it send the citations to Buckner’s “last known address.” Buckner contends that because he had not previously supplied his address to L&I, and L&I instead used Accurint to obtain the address, L&I did not really “know” that the address belonged to Buckner. We reject this contention because it is not supported by the law and would lead to absurd results.

“The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature.” Nat’l Elec. Contractors Ass’n, Cascade Chapter

v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). We begin by examining the plain meaning of the statute, which is discerned from the ordinary meaning of the language at issue and the context of the statute and statutory scheme in which that language is found. Lake, 169 Wn.2d at 526. “In undertaking a plain language analysis, we avoid interpreting a statute in a manner that leads to unlikely, strained, or absurd results.” Burns v. City of Seattle, 161 Wn.2d 129, 150, 164 P.3d 475 (2007). We may not add words to a statute and must construe it in a way that gives effect to all the language within the statute. Lake, 169 Wn.2d at 526. “A statute is ambiguous only if susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable.” Burton v. Lehman, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005). “If the statute is unambiguous after a review of the plain meaning, the court’s inquiry is at an end.” Lake, 169 Wn.2d at 526.

RCW 19.28.131 requires L&I to notify individuals of a citation against them “using a method by which the mailing can be tracked or the delivery can be confirmed sent to the last known address of the assessed party.” Similarly, WAC 296-46B-995(12)(b) explains that an appeal must be filed 20 days after notice is given to the assessed party, either by personal service or by mailing to the individual’s “last known address.” Webster’s Third New International Dictionary gives the first definitions of “know” as “to apprehend immediately with the mind or with the senses” and “to have perception, cognition, or understanding of esp[ecially] to an extensive or complete extent.” WEBSTER’S at 1252 (2002).

Here, the first definition of “know” cannot reasonably be applied to this statute, because the legislature could not intend for L&I, an administrative department of the State of Washington, to perceive an address immediately with its mind or senses. Thus, the plain meaning of “known” in this context is an address that L&I has perception, cognition, or understanding of as belonging to the assessed party. The legislature clearly did not intend for L&I to be certain the address belongs to that individual beyond a shadow of a doubt, because it only requires L&I to send the notice to the “last known address”—that is, the most recent address that L&I has an understanding of belonging to the individual. Here, where L&I did not have an address on file for Buckner because he had never registered as an electrician, L&I used a service that searches public records to find his address. Its search returned only one result for Buckner from the last 11 years, which was indeed the correct address, and L&I sent the citations to that address. We conclude that L&I followed an appropriate method for determining a last known address.

Buckner alleges that the address provided by Accurint was no better than a lucky guess. He points to evidence in the record that the L&I inspector spoke to a licensed contractor about Buckner’s reported electrical work, and suggests that L&I should have obtained Buckner’s address from that contractor. However, he presents no evidence or argument explaining why a service that relies on public records is so unreliable or why getting Buckner’s address from a third



party would be more reliable.<sup>1</sup> Buckner therefore fails to meet his burden to show that using Accurint is an unlawful procedure or that an address found from a search of public records cannot be a “known” address.<sup>2</sup>

### Due Process

Buckner next contends that L&I’s procedure of sending the citation to an address obtained through Accurint denies him of his right to due process. We disagree.

Before the state deprives an individual of life, liberty, or property, due process requires notice and an opportunity to be heard appropriate to the nature of the case. Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wn.2d 418, 422, 511 P.2d 1002 (1973). Determining what process is due in a given context requires consideration of (1) the private interest involved, (2) the risk that the current procedures will erroneously deprive a party of that interest, and (3) the governmental interest involved, including the burden that the substitute procedural requirement would entail. Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). “Due process does not require that a

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<sup>1</sup> Buckner states in his brief that L&I “used Accurint and found records for multiple addresses and multiple people with the same name.” The record does not support this assertion, and instead clearly states that “Accurint showed one current address for Mr. Buckner since 2008.” While the record does indicate that Accurint showed two social security numbers for Buckner, this does not establish that the results were ambiguous, especially where there was only one address.

<sup>2</sup> Buckner also alleges that L&I failed to comply with RCW 19.28.131’s directive that appeals of penalties be assigned to the Office of Administrative Hearings. This contention ignores that the board need only commence an adjudicative proceeding if it receives a “timely application” for one. RCW 34.05.413(2).

property owner receive actual notice before the government may take his property.” Jones v. Flowers, 547 U.S. 220, 226, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006). Instead, notice must be reasonably calculated, under all the circumstances, to notify interested parties of the action and give them an opportunity to be heard. State v. Nelson, 158 Wn.2d 699, 703, 147 P.3d 553 (2006).

Here, with respect to the first Mathews factor, the private interest involved is a property interest, as opposed to a liberty interest. While this is an important interest, “[w]here the interest at stake is only a financial one, the right which is threatened is not considered ‘fundamental’ in a constitutional sense.” Morrison, 168 Wn. App. at 273. With respect to the second factor, Buckner makes no showing whatsoever that Accurint is unreliable or that obtaining an address in that way is likely to lead to an erroneous deprivation of his interests. On the contrary, the limited information about Accurint in the record suggests that it is reliable, given that it searches public records and was able to, at least in this one case, produce the correct address. With respect to the third factor, L&I’s interest in enforcing chapter 19.28 RCW is to protect public health and safety by “ensur[ing] that electrical work is performed safely and competently.” Riveland, 138 Wn.2d at 22. Buckner offers no alternative procedure here, with the implication being that L&I cannot issue a citation to an individual unless they first supply their address to L&I. Because only registered contractors are required to supply their address to L&I, this would effectively prevent L&I from enforcing electrical safety standards in any case where an unlicensed individual is

performing electrical work. See RCW 19.28.041(1)(a) (an application for an electrical contractor license must include the applicant's address). Therefore, the governmental interest in the existing procedure is high. Because the factors weigh in favor of the current procedure, we conclude Buckner's due process rights were adequately protected by the procedure at hand.<sup>3</sup>

Equitable Estoppel

Finally, Buckner contends that L&I is estopped from holding him to a deadline of December 2 because of Perez's apparent agreement to December 5 as the due date for the appeal.<sup>4</sup> We need not reach this argument because even if the deadline was December 5, Buckner still missed the deadline. The citations clearly informed Buckner that he *must mail* his appeal letter to the chief electrical inspector in Olympia, and that it had to be *received* on the due date, not sent. Perez reiterated in his e-mail that Buckner needed to follow these instructions. Buckner failed to do so and brought his appeal in person to the Bellevue office

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<sup>3</sup> While Buckner focuses his due process argument on the reliability of Accurant, he also contends that L&I's loss of some of the pages of his appeal shows a deprivation of due process. This contention ignores the fact that this loss happened because Buckner did not comply with the required procedure outlined in the citation letter, and instead brought his appeal to the Bellevue office. The fact that pages were lost in the scanning and e-mailing process cannot be a deprivation where L&I was not required to scan or e-mail the appeal.

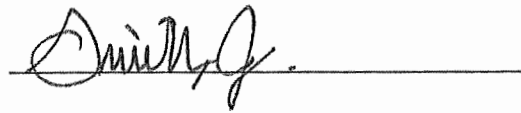
<sup>4</sup> We further note that the only evidence in the record that Perez agreed to this deadline is Buckner's assertion that Perez had agreed and Perez's failure to correct him.

instead.<sup>5</sup> His appeal letter was not received by the chief electrical inspector until December 6. Therefore, L&I did not err by denying his appeal as untimely.

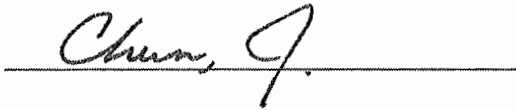
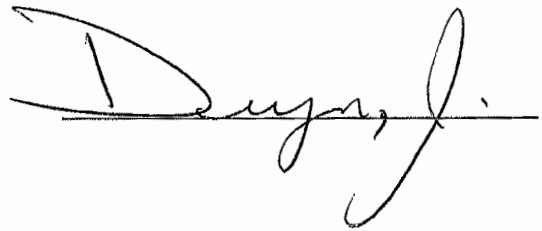
Attorney Fees

Buckner requests attorney fees under RCW 4.84.350(1), which permits the court to award fees to the prevailing party in a judicial review of agency action. Because Buckner does not prevail, we deny his request.

We affirm.

A handwritten signature in cursive script, appearing to read "Smith, J.", is written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Chen, J.", is written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dreyer, J.", is written over a horizontal line.

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<sup>5</sup> Buckner asserts that he "had confirmed [this process] was acceptable with the [L&I] electrical citations desk and with the Bellevue office." There is absolutely no evidence in the record to support this claim.

**OWADA LAW PC**

**November 10, 2021 - 10:06 AM**

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