No. 93079-1
(Court of Appeals No. 47681-9-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON TRUCKING ASSOCIATIONS, a Washington non-profit corporation; EAGLE SYSTEMS, INC., a Washington corporation; GORDON TRUCKING, INC., a Washington corporation; HANEY TRUCK LINE, INC., a Washington corporation; JASPER TRUCKING, INC., a Washington corporation; PSFL LEASING, INC., a Washington corporation; and SYSTEM-TWT TRANSPORTATION d/b/a SYSTEM-TWT, a Washington limited liability company,

Respondents,

v.

THE STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT; PAUL TRAUSE, individually and in his official capacity as the former Commissioner of the Employment Security Department, and JANE DOE TRAUSE, husband and wife and the marital community composed thereof; BILL WARD, individually and in his official capacity, and JANE DOE WARD, husband and wife and the marital community composed thereof; LAEL BYINGTON, individually and in his official capacity, and JANE DOE BYINGTON, husband and wife and the marital community composed thereof; JOY STEWART, a single individual, individually and in her official capacity; and MELISSA HARTUNG, a single individual, individually and in her official capacity; ALICIA SWANGWAN, a single individual, individually and in her official capacity,

Petitioners.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

What the petitioners—the Employment Security Department, its commissioner and various agents (collectively "ESD")—describe as an "issue of public importance" is their belief that taxpayers should have no remedy for abuses by state agencies. The respondents—the Washington Trucking Associations ("WTA") and various members (the "Carriers")—brought this lawsuit seeking redress for misconduct by ESD that included conducting rigged audits and deliberately assessing unlawful taxes, as part of an illegal interagency task force formed for political reasons in an improper effort to restructure the trucking industry. ESD's response to these allegations is that the courts have no power to address them and that the sole remedy is in the administrative process.

But in the administrative process, ESD repeatedly took the position that its means and motive in conducting the audits and issuing the assessments were irrelevant. According to ESD, the only relevant issue was whether the assessment amount was correct. If it was not, the only available remedy was to correct it. ESD then engaged in improper litigation tactics designed to ensure that the cost of challenging the assessments exceeded the value of any correction.

After years in the administrative process, WTA and the Carriers filed the present action. They alleged, *inter alia*, violations of their constitutional rights under 42 U.S.C. § 1983 and tortious interference with a business expectancy under the Washington common law. The trial court improvidently granted ESD's CR 12(b) motion to dismiss.

The Court of Appeals reversed. It held that WTA and the Carriers could maintain an action for damages caused by ESD's assessments or audit procedures that are unrelated to the amount of the challenged assessment. The central result of this holding is simple: the law provides a remedy for taxpayers whose rights are trampled on by an administrative agency. This holding is rooted in established precedent setting out the elements for tortious interference and limiting the circumstances under which a taxing authority may use the comity doctrine to thwart judicial oversight. The Court should therefore deny review. RAP 13.4(b).

B. STATEMENT OF THE CASE

The essential facts are outlined in the Court of Appeals' opinion. *See Washington Trucking Ass'ns v. State*, 192 Wn. App. 621, 369 P.3d 170 (2016). Simply put, WTA and the Carriers brought this lawsuit seeking redress for ESD's deliberate attack on the industry for political

motivations. ESD is not being candid when it attempts to recast that claim as a contention merely that its audits were "faulty."[1]

What WTA and the Carriers allege is an illegal interagency task force, designed to prohibit independent contractors to appease organized labor in exchange for political support. ESD used its auditing and tax power in bad faith, targeting the trucking industry for "enforcement," in an effort to eliminate the industry's historical use of owner/operators (truck drivers who own their own trucks) as a flexible source of trucking equipment.[2] This is an unlawful attempt by ESD to restructure an industry that Congress has specifically prohibited the states from regulating.

The allegations in this case thus go far beyond "faulty" audits. WTA and the Carriers allege that ESD wielded its audit power improperly, *requiring* its auditors to audit as many trucking companies as they could

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[1] ESD attempts to sanitize the facts of its egregious abuse of the carriers' rights. For purposes of this dismissal, however, the Court takes the facts as alleged by WTA and the Carriers as true and must consider any hypothetical facts that sustain their complaint. ESD was required to show, "beyond a reasonable doubt," that WTA and the Carriers could not "prove 'any set of facts which would justify recovery.'" *Futureselect Portfolio Mgmt., Inc. v. Tremont Group Holdings, Inc.*, 180 Wn.2d 954, 962–63, 331 P.3d 29 (2014) (quoting *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)). The trial court was required to assume the truth of all factual allegations in the complaint and also to take into account hypothetical facts supporting the claim. *Id.* "Therefore, a complaint survives a CR 12(b)(6) motion if *any* set of facts could exist that would justify recovery." *Id.* at 963 (quoting *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)). In addition to the complaint allegations, WTA and the Carriers submitted to the trial court a 23-page set of "hypothetical facts" which could be relied upon in considering the motion to dismiss. *See* CP 479–402.

[2] ESD subjected hundreds of trucking carriers to "audits" in this effort. CP 490.

find and to reclassify every owner/operator as an employee. Its auditors even intentionally imposed taxes on remuneration paid to corporations or out-of-state drivers or for equipment rental, knowing that it is illegal to assess unemployment taxes on such payments. ESD then engaged in improper litigation tactics in a deliberate effort to increase litigation costs. In this way, it attempted to strong-arm the industry into submission, knowing that the cost of challenging the assessments would invariably exceed the assessment amounts.

These allegations were not simply invented. The facts alleged in the complaint were largely revealed during discovery in the Carriers' administrative appeals. ESD obstructed more in-depth discovery into this issue, however, claiming that its methods and motives behind the audits were irrelevant in the administrative process.

The impropriety uncovered in this process was so egregious that expert witnesses, including the former State Auditor, Brian Sonntag, opined that ESD failed to conform to even the most basic standards expected of state agencies. *See* CP 517–45, 571, 629–36. Sonntag described the administrative appeal available in such cases as "cold comfort" to the taxpayer. He explained that taxing authorities have a

responsibility to perform audits thoroughly with the goal of obtaining the correct result at the audit stage. According to Sonntag, no taxpayer should be required to go through the expense and burden of an appeal because the agency did not conduct a proper audit.

C. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. Standards governing acceptance of review.

ESD seeks review under RAP 13.4(b)(3) and (4). It pays scant attention, however, to the standards applicable to those provisions. Under subsection (3), it must show a significant question of constitutional law. Under subsection (4), it must show an issue of substantial public interest.

While requesting this relief, ESD fails to explain why it opposed this Court's direct review. WTA initially appealed directly to this Court. In its opposition, ESD argued that because the lawsuit "impacts only these specific taxpayer plaintiffs, this case does not present 'an issue of broad public import.'"[3] According to ESD, this Court should not accept direct review because WTA and the Carriers' "complaints are specific to the

[3] ESD's Answer to Statement of Grounds for Direct Review, filed September 3, 2014 in Case No. 90584-3, at p. 1 (quoting RAP 4.2(a)(4)). *See also id.* at p. 5 ("this case does not present 'an issue of broad public import'").

taxpayers in this suit," and thus "no issue of broad public import warranting review is present."[4]

WTA and the Carriers sought direct review in order to expedite resolution. By opposing that request and urging that the matter be transferred to the Court of Appeals, and then asking this Court to review that court's decision, ESD seeks to delay and drive up costs. This is another example of the bad-faith tactics that have prompted this lawsuit.

The Court of Appeals' decision correctly holds that there are repercussions for abusive, bad faith actions by a taxing authority.[5] ESD's desire to avoid any negative consequences for its misconduct is not an issue of public importance. What would be cause for public concern is if the law were as ESD posits, i.e. if administrative agencies could operate without judicial oversight and if the law could provide no relief when they violate taxpayers' rights.

Well-developed law, from this Court and other jurisdictions, holds that the courts will provide remedies for abusive or arbitrary conduct by government officials under 42 U.S.C. § 1983. *See, e.g., Jones v. State,*

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[4] *Id.* at p. 15.

[5] It is well-established that agencies like ESD must exercise their expansive taxing and auditing authority in *good faith. Dep't of Revenue v. March*, 25 Wn. App. 314, 319, 610 P.2d 916 (1979); *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 313-14, 98 S. Ct. 2357, 57 L. Ed.2d 221 (1978)

170 Wn.2d 338, 242 P.3d 825 (2010) (allowing claims for due process violations and tortious interference where Board of Pharmacy officials allegedly conducted improper investigations resulting in suspension of pharmacist's license); *Tarabochia v. Adkins,* 766 F.3d 1115 (9th Cir. 2014) (reversing dismissal of civil rights claim against Washington Department of Fish and Wildlife agents, alleging that agents targeted plaintiffs for investigation for personal reasons). ESD fails to show any public interest in undermining these principles.

2. The Court of Appeals correctly found that "no remedy at all" is not an adequate remedy.

In holding that the Carriers can maintain a claim under 42 U.S.C. § 1983, the Court of Appeals relied on established precedent from this Court and the U.S. Supreme Court. ESD attempted to invoke the Tax Injunction Act ("TIA") and the comity doctrine to bar the § 1983 claim. But the Court of Appeals, in a thoughtful, 32-page, unanimous opinion, rested on the well-settled rule that the TIA and comity apply *only* when state law provides an adequate remedy. *See WTA*, 369 P.3d at 182 (citing *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 589, 592, 115 S. Ct. 2351, 132 L.Ed.2d 509 (1995)).

The Court of Appeals carefully analyzed the complaint and concluded that the Carriers raised some claims which could be remedied in the state administrative process and others for which the state process provides no remedy. *Id.* at 183–84. The court concluded that the § 1983 claim is barred as to those claims for which there is a remedy, but not for those that the administrative process cannot address. *Id.* at 184.

The opinion is firmly rooted in the case law, which holds—unsurprisingly—that where state law cannot address a claim's merits, the remedy is not adequate. *See Hillsborough v. Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946). In a case cited by ESD, *Carrier Corp. v. Perez*, 677 F.2d 162, 165 (1st Cir. 1982), the First Circuit held that an adequate remedy must include "an opportunity to raise the desired legal objections with the eventual possibility of Supreme Court review of that claim." *Carrier*, 677 F.2d at 165. While finding the remedy adequate in the case before it, the court distinguished *Hillsborough*, in which the procedural criteria were not adequate. The remedy in *Hillsborough* was inadequate because: (1) "the state board of tax appeals could not pass upon constitutional questions"; and (2) the state law in question "apparently

would not allow a taxpayer to raise a federal 'equal protection' claim in a suit to lower his own taxes." *Carrier*, 677 F.2d at 166.[6]

Here, the Court of Appeals observed that the administrative process under state law has authority only to correct the amount of the assessment. *WTA*, 369 P.3d at 184. The court noted further that the complaint allegations here involve conduct that violated the taxpayers' rights regardless of whether the assessments were valid. *Id.* Because correction of the assessment amount would not provide any redress for these violations, the court properly concluded that the remedy at state law, as to those claims, is not adequate.

ESD *grossly* mischaracterizes the Court of Appeals' opinion when it claims that "Washington now stands alone in finding a state law remedy inadequate because it does not afford the same type of relief as § 1983."[7] The Court of Appeals did not base its decision on the lack of § 1983 relief. It based its decision on the fact that the administrative process provides *no* relief for the type of impropriety alleged here, as the Court of Appeals documented. *See WTA*, 192 Wn. App. at 184.

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[6] ESD offers a red herring when it argues, at pp. 10–12 of its petition, that other courts have found APA-type remedies adequate. That such a remedy might have been adequate for some other party's claim in some other context is not material to whether the administrative remedy is adequate for the particular claims raised here.

[7] Petition for Review at 10–11.

This conclusion is well supported by the case law, both in Washington and around the country. *See Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 11, 829 P.2d 765 (1992); *Hillsborough*, 326 U.S. at 624; *Johnson v. City of Seattle*, 184 Wn. App. 8, 335 P.3d 1027 (Oct. 13, 2014); *Patel v. City of San Bernardino*, 310 F.3d 1138 (9th Cir. 2002). In *Patel*, for example, the city continued to collect a tax pending appellate review of a trial court decision declaring the tax unconstitutional. The Ninth Circuit allowed the taxpayer to pursue a § 1983 claim for damages caused by the knowing imposition of unlawful taxes. *Id.* at 1142. The court relied on U.S. Supreme Court authority holding that "uncertainty regarding a State's remedy may make it less than 'plain.'" *Id.* (quoting *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503, 516–17, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981)). *See also Hibbs v. Winn*, 542 U.S. 88, 107–08, 124 S. Ct. 2276, 159 L.Ed.2d 172 (2004) (an adequate remedy is one that is plain, speedy, and efficient). This Court, likewise, has allowed a plaintiff to proceed under § 1983 against a taxing authority that enforced a tax it knew to be invalid. *See Sintra*, 119 Wn.2d at 24.

More recently, in *Johnson*, the Washington Court of Appeals held that an administrative process that prevents a party from asserting a valid

defense violates that party's procedural due process rights. In the underlying case, the hearing examiner refused to consider a homeowner's "legal nonconforming use" defense to a land-use violation because, under the city code, only the Department could make this determination. *Johnson*, 184 Wn. App. at 21. Citing *Sintra*, the Court of Appeals therefore allowed the homeowner to maintain a § 1983 claim against the city. *Id.* at 22. These cases provide ample authority for the Court of Appeals' decision here that there is no adequate remedy in an administrative process that cannot address the merits of a claim.

ESD strains to mischaracterize this straightforward analysis as something controversial. It attempts to fabricate a broad-sweeping rule that the "adequate remedy" analysis is limited entirely to a review of the procedures available. According to ESD, as long as the procedure is adequate, the remedy is as well, *regardless of whether the process can address the claim's merits*—in other words, its ends justify egregiously unconstitutional means.

ESD's argument is absurd on its face. A federal court recently described it as an "extreme position" that is "based on a vast misreading of the case law." *Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gomez*,

No. 3:15-CV-03018 (JAF), 2016 WL 1183091, at *37 (D. P.R. Mar. 28, 2016). This argument, the court explained, "might seem plausible at first blush" only by "reading certain excerpts of case law out of context." *Id.* The court concluded that "procedures are sufficient only insofar as they lead to their desired effect." *Id.* (citing *Rosewell*, 450 U.S. 503).[8]

That "extreme position" is the foundation for ESD's petition: an imaginary rule that in analyzing the adequacy of a state's remedy the courts cannot consider whether the remedy allows a claim to be considered on its merits. The Court of Appeals' rejection of this absurd argument does not create an issue of public interest. That decision is consistent with the U.S. Supreme Court's pronouncement that a "broad construction of § 1983 is compelled by the statutory language, which speaks of deprivations of 'any rights, privileges, or immunities secured by

[8] Consistent with this analysis, *every* case cited by ESD on this point recognized that the "adequate remedy" could at least address, on the merits, the allegation that the plaintiffs' federal rights had been violated. *See, e.g.*, *Francis v. City of Columbus*, 267 Neb. 553, 676 N.W.2d 346, 352 (2004) ("a claim that a special tax assessment violates the federal Constitution can be raised *and adjudicated*" under Nebraska's tax refund statute (emphasis added)); *Gen. Motors Corp. v. City of Linden*, 143 N.J. 336, 566, 671 A.2d 560 (1996) ("New Jersey law provides several opportunities for taxpayers to raise constitutional objections to an added assessment"); *California v. Grace Brethren Church*, 457 U.S. 393, 415–16, 102 S. Ct. 2498, 2511, 73 L. Ed. 2d 93 (1982) (taxpayer could "seek a judicial determination of the constitutionality of the tax," with the state taxing authorities being expected to respect the court's holding in future proceedings if the taxpayer prevails); *Rosewell*, 450 U.S. at 514–15 (respondent had not alleged any procedural defect "that would preclude preservation *and consideration* of her federal rights" (emphasis added)).

the Constitution and laws.'" *Dennis v. Higgins*, 498 U.S. 439, 443, 111 S.Ct. 865, 112 L.Ed.2d 969 (1991) (quoting 28 U.S.C. § 1983). There is no need for this Court to review that determination. RAP 13.4(b)(4).

3. The Court of Appeals correctly acknowledged WTA's potential associational standing.

Likewise, the Court of Appeals' holding as to associational standing is well grounded in this Court's precedent, as set forth in *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 215–16, 45 P.3d 186, *amended on denial of reconsideration*, 50 P.3d 618 (2002). There, this Court held that an association can seek damages on behalf of its members that are "certain, easily ascertainable, and within the knowledge of the defendant." *Id.* Here, the Court of Appeals explained that, at this nascent stage, where the precise remedies sought under § 1983 are not clear from the complaint, it was premature to decide that the remedies do not meet the *Int'l Ass'n of Firefighters* standard.

ESD attempts to fabricate an error by pointing to the Court of Appeals' denial of associational standing to assert tortious interference. According to ESD's logic, this result somehow compels the same result as to § 1983. ESD's argument ignores the obvious point that the two types of claims provide different types of remedies.

A claim for punitive damages under § 1983, for example, would focus on the reprehensibility of ESD's conduct and its financial condition. *See Morgan v. Woessner*, 997 F.2d 1244, 1256–57 (9th Cir. 1993). Because these two factors are within ESD's knowledge, this type of damage claim can be calculated without extensive participation by WTA's individual members. The Court of Appeals thus correctly held that it was premature to deny WTA associational standing on this claim.[9] Review is not merited. RAP 13.4(b)(1).

4. The Court of Appeals correctly permitted the Carriers to seek redress for ESD's improper motive and means in interfering with the Carriers' business expectancies.

Finally, the Court of Appeals allowed the Carriers' to proceed with their claim for tortious interference. Again, the court's thorough analysis was grounded in this Court's jurisprudence. The elements for tortious interference are well-settled and permit a plaintiff to seek redress for tortious interference where the defendant interferes with a business expectancy for an improper purpose or by improper means. *WTA*, 369

[9] Although ESD's standing arguments below were based on the difficulty of calculating damages, it now lists (in a footnote on p. 15) several ways in which member participation might be required to prove liability. But the mere fact that members may need to participate as witnesses is not fatal to associational standing. *See Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 363, 312 P.3d 665 (2013), *review denied* 180 Wn.2d 1007, 320 P.3d 718 (2014).

P.3d at 185 (citing *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 168, 273 P.3d 965 (2012)).

ESD offers two arguments in opposition. The first is barred by judicial estoppel. The second improperly asks the courts to adjudge facts on a Rule 12 motion.

a. ESD cannot assert that its means or purpose can be reviewed in the administrative process.

ESD's first argument is based on the Employment Security Act's exclusive-remedy provision, which states that its remedies "for determining the justness or correctness of assessments" are exclusive. RCW 50.32.180. According to ESD, this provides a remedy for tortious interference because any improper purpose or means would be included in a challenge to the "justness" of the assessment.

This argument is remarkable for its brazen conflict with ESD's insistence, throughout years of litigation, that its means and purposes are irrelevant. For example, ESD argued as follows in respondent System-TWT Transport's administrative appeal:

> In essence, System-TWT attempts to attack the investigation rather than the assessment, but the purpose of this de novo review is to determine the correctness of the assessment. . . . Courts cannot, and should not,

> undertake a probe of the mental processes utilized by an administrative officer in performing his or her function of decision. . . . Under RCW 50.32.050, in an appeal from a tax assessment, the appeal tribunal "shall affirm, modify or set aside the notice of assessment." It is the assessment, and not the audit, that is on review here.

Department's Response to Appellant's Hearing Brief upon Stipulated Facts, filed in *In the Matter of System-TWT Transport*, OAH Dkt. No. 122014-00336, at 6.[10]

Subsequently, ESD's attorney argued at respondent Haney Truck Line, Inc.'s administrative hearing that the ALJ could not provide a remedy *even for arbitrary and capricious conduct*:

> MR. PETERSON: *I don't think that whether the audit was done in an arbitrary and capricious is really the issue for this tribunal to be deciding.* This tribunal is deciding whether the assessment is correct. So not every perceived legal wrong has a remedy.
>
> And *the carrier seems to be complaining about the way in which the department conducted its audit. I don't believe that this relates to the correctness of the assessment*, based on the reasons described in the

[10] The excerpts cited in this section from ESD's arguments in the administrative process were attached as appendixes to WTA and the Carriers' March 18, 2016 response to ESD's Motion for Reconsideration at the Court of Appeals.

> department's briefing and in argument today.

Transcript of Oral Argument on Stipulated Facts before Juliana K. Weber, ALJ, June 30, 2015, *In re Haney Truck Line, Inc.*, OSH Dkt. No. 122014-00340, at 91–92 (emphasis added).

On March 10, 2016, twelve days *after* raising the present argument in its Motion for Reconsideration at the Court of Appeals, ESD restated these arguments in detail in Spokane County Superior Court:

> The issue here is whether the assessment is in accord with the Employment Security Act, not whether the Department complied with the audit procedures Hatfield would have preferred. . . . In the proceeding below, Hatfield was afforded the opportunity to challenge the correctness of the assessment . . . . *The audit conduct and auditor's compliance with the Department's audit standards does not bear on whether the assessment is correct, nor whether the Commissioner properly considered its correctness.*
>
> . . .
>
> Furthermore, under RCW 50.32.050, in an appeal from a tax assessment, the appeal tribunal "shall affirm, *modify or set aside the notice of assessment." The purpose of this de novo review is to determine the correctness of the assessment. . . . Courts cannot, and should not, undertake a probe of the mental processes utilized by an*

> *administrative officer in performing his or her function of decision.* . . . Hatfield's attempt to focus on the conduct of the audit, rather than on the correctness of the assessment, is misguided.
>
> . . .
>
> *The Court should ignore Hatfield's misguided effort to focus on the investigation rather than the correctness of the assessment.*

Respondent's Brief, filed in *Hatfield Enterprizes, Inc. v. State of Washington Employment Security Department*, Spokane County Superior Court, March 10, 2016, at 41–47 (emphasis added).

Having so insisted, ESD is judicially estopped from arguing that the administrative process provides a remedy for improper means or motive. *See In re Estate of Hambleton*, 181 Wn.2d 802, 833, 335 P.3d 398 (2014) (judicial estoppel "precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position") (quoting *Anfinson v. FedEx Ground Package System, Inc.*, 174 Wn.2d 851, 861 n. 5, 281 P.3d 289 (2012)).

b. The Carriers raised a valid claim for tortious interference.

ESD's second argument on tortious interference essentially faults the Court of Appeals for not deciding issues of fact on a Rule 12 motion.

ESD argues that the court should have decided as a matter of law that there was no interference with the Carriers' business expectancies and nothing improper in ESD's actions. The Court of Appeals properly declined the invitation to act as the fact finder.

Under the complaint allegations, which must be taken as true, ESD did not discharge its duties properly. The complaint allegations include that ESD *deliberately* assessed unlawful taxes, *knowing* that the cost to challenge them would exceed the amount saved by correcting them. ESD thus gambled that economics would force the Carriers to pay the unlawful taxes and that, even if they challenged the taxes, the administrative process could impose no negative repercussions for ESD's illegal activity.

The complaint also alleges that ESD engaged in unauthorized interagency action and that its motive in targeting trucking was to restructure the industry, a purpose that is directly prohibited by federal law. *See* 49 U.S.C. § 14501(c). On review of this Rule 12 dismissal, the trial court must be reversed if any conceivable facts consistent with the complaint would entitle WTA or the Carriers to relief. *Parrilla v. King Cnty.*, 138 Wn. App. 427, 431-32, 157 P.3d 879, 881-82 (2007). The Court of Appeals correctly held that dismissal of the case, before WTA

and the Carriers have been able to explore ESD's misconduct through discovery, was premature. Review is not merited. RAP 13.4(b)(1).

D. CONCLUSION

Underlying ESD's petition is the assumption that its illegal conduct may be undertaken with impunity. The Court of Appeals' decision properly rejected ESD's attempt to remove its misconduct from any sort of judicial scrutiny. This common-sense holding is amply supported by controlling decisions of this Court. There is no reason for this Court to grant review.

RESPECTFULLY SUBMITTED this 16th day of June, 2016.

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