Supreme Court No. 95420-8
Court of Appeals No. 75779-2-I

SUPREME COURT
OF THE STATE OF WASHINGTON

FEDERAL HOME LOAN BANK OF SEATTLE,

Petitioner,

v.

CREDIT SUISSE SECURITIES (USA) LLC, f/k/a CREDIT SUISSE FIRST BOSTON LLC, CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., and CREDIT SUISSE MANAGEMENT LLC, f/k/a CREDIT SUISSE FIRST BOSTON MANAGEMENT LLC,

Respondents.

ANSWER TO PETITION FOR REVIEW

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Respondents Credit Suisse Securities (USA) LLC, Credit Suisse First Boston Mortgage Securities Corp. and Credit Suisse Management LLC (collectively, "Credit Suisse"), respectfully submit this brief in opposition to Federal Home Loan Bank of Seattle's ("FHLBS") Petition for Review, dated January 10, 2018, of an unpublished decision of the Court of Appeals, Division One, dated December 11, 2017 in *Federal Home Loan Bank of Seattle v. Credit Suisse Securities (USA) LLC*, No. 75779-2-I.

I. INTRODUCTION

This Court should deny review. FHLBS' petition is nothing more than a bid to change settled Washington law because it cannot prove its claim under existing law. FHLBS brought a Washington State Securities Act ("WSSA") claim against Credit Suisse, claiming that it relied on purported misrepresentations in prospectus supplements in purchasing securities from Credit Suisse. Discovery established that FHLBS did not and could not have reviewed the prospectus supplements in question before making its purchase of securities. FHLBS is therefore unable to prove a crucial element of a WSSA claim—reliance. Since it cannot prove this element of its claim, FHLBS attempted to revive its case by asking the Court of Appeals to eliminate the element of reliance for a WSSA claim. The Court of Appeals correctly refused and affirmed the

trial court. Now FHLBS asks this Court to overrule decades of settled Washington law, without a single intervening decision in this state even questioning this Court's longstanding holding that reliance is an element under the WSSA. There is no basis for FHLBS' requested action.

II. STATEMENT OF ISSUES

A. Should the Court deny review under RAP 13.4(b)(1) because the Court of Appeals' decision followed this Court's well-established precedent?

B. Should the Court deny review under RAP 13.4(b)(4) because FHLBS' dissatisfaction with long-settled Washington law does not amount to an issue of substantial public interest?

III. STATEMENT OF THE CASE

This case involves residential mortgage-backed securities ("RMBS") certificates that FHLBS purchased from Credit Suisse. (CP 1-109.) In its complaint, FHLBS alleged that certain prospectus supplements that Credit Suisse filed with the U.S. Securities and Exchange Commission (the "SEC") relating to the RMBS certificates at issue contained false or misleading statements. (*Id.*) FHLBS alleged that its securities traders relied on alleged misstatements in the prospectus supplements in purchasing the RMBS certificates. (CP 53, 86-87, 108-09.) Discovery demonstrated that these allegations were untrue: FHLBS

did not and could not have relied on alleged misstatements in the prospectus supplements. Time stamps from the SEC's website and FHLBS' trading records establish that FHLBS purchased the RMBS certificates before the prospectus supplements were available. (CP 3268-69, 3276, 3281, 3286, SCP 9852, 10364.) FHLBS made its purchases without ever having seen the documents it subsequently claimed to have relied on.

Credit Suisse moved for summary judgment on the ground that FHLBS could not prove reliance on the challenged prospectus supplements based on the undisputed evidence. (CP 2636-38.) The trial court granted summary judgment to Credit Suisse on May 4, 2016.[1] (CP 3311-12.) In a subsequent order denying FHLBS' May 16, 2016 motion for reconsideration, the trial court held:

> FHLBS failed to establish that it reasonably relied on the misstatements it alleged were contained in the prospectus supplements for those deals. The undisputed evidence demonstrated that FHLBS had not reviewed the prospectus supplements before settling its trades and therefore FHLBS could not have reasonably relied upon the purported

[1] One of FHLBS' arguments against summary judgment was that FHLBS supposedly must have seen the prospectus supplements, because, according to FHLBS, if Credit Suisse had filed the prospectus supplements when the time stamps on the SEC's website says it did (*i.e.*, after FHLBS purchased the securities), Credit Suisse would have violated SEC Rules. (RP 613.) Credit Suisse responded that there was no basis to question the time stamps from the SEC's website and that Credit Suisse had not violated SEC Rules because the SEC Rules permit delivery of the prospectus after sale of the security. (RP 616-17.) The trial court granted summary judgment to Credit Suisse. FHLBS did not appeal this issue to the Court of Appeals, and it does not appeal it now.

misstatements therein.

(SCP 10461.) FHLBS did not appeal this ruling.[2]

On August 30, 2016, FHLBS appealed to the Court of Appeals. It no longer argued that it relied on the challenged statements. Instead, its only assignment of error on appeal was that the trial court "erred by holding that, in an action under RCW 21.20.010(2), a plaintiff must prove that it relied on the [challenged] statement". (FHLBS Br. 5.) FHLBS has waived all other issues.[3]

On December 11, 2017, the Court of Appeals found that a WSSA claim requires reliance and affirmed the trial court's dismissal of FHLBS' case. (Op. 1, 9.) On January 10, 2018, FHLBS filed a petition asking this Court to grant review, arguing that the Court of Appeals erred in finding that reliance is an element of the WSSA. (Pet. 3.)

IV. ARGUMENT

This Court should deny review. FHLBS has not met the criteria

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[2] Also in its motion for reconsideration, FHLBS asked the trial court to reconsider its decision on an entirely new theory of reliance based upon information that its traders purportedly had seen in connection with RMBS not at issue here or in preliminary sales materials that they may (or may not) have reviewed. (CP 3328-34.) The trial court rejected the theory on both procedural and substantive grounds. (SCP 10461-62.) Because FHLBS had not previously raised or pleaded this, the trial court held that the theory was improperly raised, stating that "[a]t every stage of this litigation, FHLBS has argued that it relied upon the prospectus supplements". (SCP 10461.) The trial court also rejected this theory on the merits. (SCP 10461-62.) FHLBS did not appeal these issues to the Court of Appeals and does not appeal them now.

[3] *See* RAP 10.3(g); *State v. Sims*, 171 Wn.2d 436, 441, 256 P.3d 285 (2011).

required for a discretionary grant of review by this Court.

> A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

FHLBS argues that review should be granted under RAP 13.4(b)(1) and (4) because the Court of Appeals' decision allegedly conflicts with decisions of this Court and involves an issue of substantial public interest. (Pet. 2.) The Court of Appeals' decision does neither. The Court of Appeals' decision is in keeping with 50 years of well-established Washington law and does not conflict with any decision of this Court. FHLBS does not cite a single case holding that reliance is not an element of the WSSA (*see* Section A), nor does it present an issue of substantial public interest—dissatisfaction with existing settled law is not a matter of substantial public interest (*see* Section B). Lastly, FHLBS' argument about *other* states' laws is irrelevant and wrong. (*See* Section

C.) This Court has denied review of this issue before, and it should do so again here.

A. Review Should Not Be Granted Under RAP 13.4(b)(1) Because the Court of Appeals' Decision Does Not Conflict with Any of This Court's Decisions.

FHLBS argues that the Court of Appeals' decision "conflicts with many decisions of this Court". (Pet. 2.) This is not true. The Court of Appeals' decision follows a half century of unbroken and consistent Washington law holding reliance to be an element of a WSSA claim. (*See* Section A.1.) The Court of Appeals' decision was correct (*see* Section A.2), and does not conflict with this Court's holdings that the WSSA does not require scienter or loss causation or permit waiver or estoppel defenses (*see* Section A.3) or with this Court's principle that the WSSA be interpreted to protect investors (*see* Section A.4).

1. The decision below follows a half century of consistent Washington law requiring reliance.

FHLBS asks this Court to upend half a century of settled and uniform Washington law. FHLBS cannot cite a single case holding that a WSSA claim does not require reliance, because no court in Washington, at any level, has ever so held. This Court has clearly held that reliance is an element of a WSSA claim, and other Washington courts have followed this Court's clear pronouncement.

This Court has articulated clearly that reliance is an element of a

WSSA claim. In *Hines v. Data Line Systems, Inc.*, this Court held that to maintain a WSSA claim, "investors need only show that the misrepresentations were material and *that they relied on the misrepresentations* in connection with the sale of the securities." 114 Wn.2d 127, 134, 787 P.2d 8 (1990) (emphasis added). Sixteen years later this Court again recognized the WSSA's reliance requirement, stating, "that [plaintiff], in entering the agreement, *relied on [defendant's] material misrepresentation* or omission regarding the ownership of his company . . . established [defendant's] violation of [the WSSA]." *Go2Net, Inc. v. Freeyellow.com, Inc.*, 158 Wn.2d 247, 250, 143 P.3d 590 (2006) (emphasis added). FHLBS points to no decision to the contrary.

FHLBS asks this Court to "clarify" that it "did not intend by that one sentence [in *Hines*] to impose a reasonable reliance requirement." (Pet. 8-9.) This is not a credible argument. The level of causation required for a WSSA claim—reliance, or reliance and loss causation—was squarely before this Court. There is no ambiguity in this Court's holding:

> The officers and directors argue that before they can be liable under RCW 21.20.010, the investors must establish that defendants' misrepresentations were the proximate reason for their investments' decline in value. *We disagree. The investors need only show that the misrepresentations were material and that they relied on the misrepresentations in connection with the sale of the securities. Findings of Fact* 2.24 through 2.32 to which directors have not assigned error and are therefore verities

> *substantiate that each investor relied on statements in the selling materials* with respect to the importance of Peterson, the chief executive officer, to the company.
>
> . . .
>
> The violation is in the misrepresentation itself; it is not how the misrepresentation affected the price of the stock. [WSSA] provides rescission as the basic remedy. Thus *an investor who is wrongfully induced to purchase a security* may recover his investment without any requirement of showing a decline in the value of the stock.

Hines, 114 Wn.2d at 134-35 (footnote omitted, emphasis added). Any suggestion that this Court was somehow asleep at the wheel when it stated that the investors had to prove reliance is baseless.

Washington courts have uniformly followed this Court's holding in *Hines*. The Court of Appeals articulated the reliance requirement as early as 1970, *Shermer v. Baker*, 2 Wn. App. 845, 858, 472 P.2d 589 (1970) ("It is sufficient [for a WSSA claim] that *the plaintiff relied upon the misrepresentation* or omission of a material fact." (emphasis added)), and it has continued to hold that reliance is an element of a WSSA claim after *Hines*. In *Guarino v. Interactive Objects, Inc.*, the Court of Appeals held that reliance may be presumed under the WSSA "when the defendant omits to disclose a material fact". 122 Wn. App. 95, 109, 86 P.3d 1175 (2004). In *Stewart v. Estate of Steiner*, the Court of Appeals adopted a multi-factor test for determining whether reliance on an alleged misrepresentation is reasonable. 122 Wn. App. 258, 274, 93 P.3d 919

(2004). In *Helenius v. Chelius*, the Court of Appeals held that a contract's "integration clause" does not preclude reasonable reliance under the WSSA on statements outside the contract. 131 Wn. App. 421, 442, 120 P.3d 954 (2005). In *FutureSelect Portfolio Management, Inc. v. Tremont Group Holdings, Inc.*, the Court of Appeals held that Washington's "liberal notice-pleading standard" applies to alleging reasonable reliance under the WSSA. 175 Wn. App. 840, 869-70, 309 P.3d 555 (2013), *aff'd in part, rev'd in part and remanded*, 180 Wn.2d 954, 331 P.3d 29 (2014). Most of these decisions cite *Hines* as the basis for the reliance requirement. *See id.* at 867-68 & n.67; *Stewart*, 122 Wn. App. at 260 & n.1; *Guarino*, 122 Wn. App. at 118-19. Federal courts have also followed the law established by *Hines* and required reliance for WSSA claims.[4]

If, as FHLBS argues, this Court stated in *Hines* that reliance was required but did not really mean it (*see* Pet. 9-11), this Court has had ample opportunity to grant review to "correct" this "error". It has not done so, *see Kunkle v. W. Wireless Corp.*, 161 Wn.2d 1010, 166 P.3d 1217 (2007) (Table) (denying review); *Stewart v. Estate of Steiner*, 153 Wn.2d

[4] *See In re Metro. Sec. Litig.*, No. CV-04-25-FVS, 2009 WL 36776, at *2, 4-5 (W.D. Wash. Jan. 6, 2009) (declining to certify class of investors where individualized proof of reliance required); *Moore v. Thornwater Co. LP*, No. C01-1944C, 2006 WL 1423535, at *8 (W.D. Wash. May 23, 2006) (reliance on alleged misstatements was reasonable); *In re Intermec Corp. Sec. Litig.*, No. C90-7832, 1991 WL 207370, at *3 (W.D. Wash. June 17, 1991) (certifying class of investors where securities traded in an efficient market and presumption of reliance applied).

1022, 108 P.3d 1229 (2005) (Table) (same), and should not do so now.

2. The Court of Appeals' decision was correct.

The Court of Appeals correctly found that the WSSA has a reliance requirement. The Washington legislature intended it to have a reliance requirement: the language of the liability provision of the WSSA is copied from federal Rule 10b-5, which requires reliance, and the legislature has never amended the WSSA to eliminate reliance. (Op. 5-8.)

The language of the WSSA liability provision, RCW 21.20.010, is nearly identical to Rule 10b-5. It is well-settled that Rule 10b-5, 17 C.F.R. § 240.10b-5, a federal rule promulgated pursuant to Section 10(b) of the Securities Exchange Act of 1934, requires reliance.[5] The only difference between the language of Rule 10b-5 and RCW 21.20.010 is the interstate commerce requirement of Rule 10b-5. This Court has held that the liability provision of the WSSA is modeled on Rule 10b-5, a fact FHLBS conveniently omits.[6]

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[5] *E.g.*, *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2418 n.1, 189 L. Ed. 2d 339 (2014).

[6] *See Kinney v. Cook*, 159 Wn.2d 837, 843, 154 P.3d 206, 210 (2007) (RCW 21.20.010 is "patterned after and restates in substantial part the language of the federal Securities Exchange Act of 1934"); *Kittilson v. Ford*, 93 Wn.2d 223, 226, 608 P.2d 264 (1980) ("Rule 10b-5 . . . is identical to RCW 21.20.010 except for . . . interstate commerce"); *Clausing v. DeHart*, 83 Wn.2d 70, 72, 515 P.2d 982, 984 (1973) ("RCW 21.20[] is patterned after . . . the language of the federal Securities Exchange Act of 1934"); *see also Shermer*, 2 Wn. App. at 848-49 ("[R]ule 10b-5 . . . is strikingly similar to, and for all practical respects precisely the same as, RCW 21.20.010").

FHLBS' argument that RCW 21.20.010's language is identical to Section 12(a)(2) of the Securities Act 1933, 15 U.S.C. § 77*l*(a)(2), which does not require scienter, reliance or loss causation, is misleading. (Pet. 12-13.) FHLBS asks this Court to look only at subsection (2) of RCW 21.20.010 and ignore all other language. It is true that the language in subsection (2) of RCW 21.20.010 appears in *both* Rule 10b-5(2) and Section 12(a)(2). However, the *entirety* of Rule 10b-5 matches the *entirety* of RCW 21.20.010 (with the exception of the interstate commerce requirement in the federal rule). By contrast, Section 12(a)(2) does not contain the language in RCW 21.20.010 subsections (a) and (c) (identical to Rule 10b-5 subsections (1) and (3)).

Another portion of the WSSA *does* take language from Section 12(a)(2), but RCW 21.20.010, the WSSA's *liability* provision at issue here, does not. It is RCW 21.20.430, the WSSA's *remedy* provision, that contains language from Section 12(a)(2). Most obviously, RCW 21.20.430 prescribes the Section 12(a)(2) remedy of rescission for a violation of RCW 21.20.010.

FHLBS claims that the Court of Appeals' reasoning leads to the "absurd" conclusion that "because it modeled RCW 21.20.010 on Rule 10b-5, the Legislature intended that RCW 21.20.010 would thereafter mean whatever the federal courts thought that Rule 10b-5 meant."

(Pet. 15.) It is not clear how this conclusion follows from the Court of Appeals' reasoning. Washington courts' interpretation of RCW 21.20.010 largely tracks Rule 10b-5, but is not identical to Rule 10b-5. The WSSA specifically requires that it be "construed . . . to coordinate the interpretation and administration of this chapter with the related federal regulation." RCW 21.20.900. There is nothing "absurd" about the Court of Appeals doing exactly that.

FHLBS also claims that the Court of Appeals' reasoning leads to the "absurd" conclusion that "the Legislature understood [Rule 10b-5] required proof of reasonable reliance even though the rule did not say so and even though the United States Supreme Court would not interpret the rule that way for 17 more years" (Pet. 14). However, by 1959, the year of the WSSA's enactment, federal courts across the country had been interpreting Rule 10b-5 to require reliance for more than a decade.[7] As the Court of Appeals noted, "the Washington Legislature may be presumed to have known about the requirements of Rule 10b-5." (Op. 6.)

Moreover, the Washington Legislature has never amended the WSSA to eliminate reliance—action it could have taken had it believed

[7] *See, e.g., Reed v. Riddle Airlines*, 266 F.2d 314, 319 (5th Cir. 1959); *Mills v. Sarjem Corp.*, 133 F. Supp. 753, 767 (D.N.J. 1955); *Speed v. Transamerica Corp.*, 5 F.R.D. 56, 60 (D. Del. 1945).

Washington courts were interpreting the WSSA incorrectly. The Court of Appeals first articulated the reliance requirement in 1970; this Court specifically held reliance to be a requirement in 1990; and since then various Court of Appeals decisions have developed the law of reliance. (*See* Section A.1.) Yet in the past 50 years, and in the face of what FHLBS characterizes as the Court of Appeals "misconstru[ing]" the law (Pet. 11), the Washington Legislature has not acted to "correct" this supposed mistake. The Legislature knows how to amend this statute; it has done so nine times since its enactment.[8] None of those amendments removed reliance. Thus the Legislature has acquiesced to the courts' well-known interpretation of the WSSA to require reliance.[9]

3. The Court of Appeals' decision does not conflict with this Court's holdings on scienter, loss causation or waiver and estoppel defenses.

FHLBS argues that the Court of Appeals' decision conflicts "with this Court's interpretation of section (2) of the WSSA as a strict liability

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[8] *See* Laws of 1998, ch. 15, § 20; Laws of 1986, ch. 304, § 1; Laws of 1985, ch. 171, § 1; Laws of 1981, ch. 272, § 9; Laws of 1979, Ex. Sess., ch. 68, § 30; Laws of 1977, Ex. Sess., ch. 172, § 4; Laws of 1975, 1st Ex. Sess., ch. 84, § 24; Laws of 1974, Ex. Sess., ch. 77, § 11; Laws of 1967, ch. 199, § 2.

[9] *City of Fed. Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) (noting that Washington's Legislature is "presume[d] [to be] aware of judicial interpretations of its enactments. . . . [I]ts failure to amend a statute . . . [indicates] legislative acquiescence in that decision" and concluding that legislative silence for 23 years constituted legislative acquiescence); *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 181, 149 P.3d 616 (2006) ("If the legislature does not register its disapproval of a court opinion, at some point that silence itself is evidence of legislative approval.").

statute" (Pet. 15). What FHLBS means by this is that because this Court has held that the WSSA does not require scienter or loss causation and does not permit waiver or estoppel defenses, the Court of Appeals should have found that the WSSA also does not require reliance. (Pet. 15-18.) There is no conflict here. This Court's holdings on scienter, loss causation and waiver and estoppel defenses do not have anything to do with whether the WSSA requires reliance. Two of these cases specifically state that the WSSA *does* have a reliance requirement.

The three decisions FHLBS points to are: *Kittilson*, in which this Court held that scienter is not required for a WSSA claim; *Hines*, in which this Court held that loss causation is not required for a WSSA claim; and *Go2Net*, in which this Court held that estoppel and waiver are not available defenses to a WSSA claim. (Pet. 15-18.) FHLBS claims that the Court of Appeals "erred in treating these decisions as just ad hoc choices" and argues that because the WSSA "has no counterpart to [S]ection 10(b) of the 1934 Act, a plaintiff need prove no elements of common-law fraud." (Pet. 17-18.) This is wrong.

First, none of these cases holds that reliance is not an element of the WSSA—two of them specifically state that reliance *is* required. In *Hines*, this Court specifically held that reliance *is* an element of a WSSA claim. (*See* Section A.1.) In *Go2Net*, this Court again articulated that

reliance *is* an element. (*See* Section A.1.) In *Kittilson*, 93 Wn.2d at 227, this Court only discussed scienter, but it endorsed the interpretation of RCW 21.20.010 in *Shermer*, and *Shermer* required reliance. (*See* Section A.1.) There is clearly no conflict here.

Second, two of these cases involved interpretations of RCW 21.20.430, the *remedy* provision of the WSSA, *not* RCW 21.20.010, the *liability* provision at issue here. In *Hines*, this Court held that the WSSA does not require loss causation because the remedy for a WSSA violation, as prescribed by RCW 21.20.430, is rescission. 114 Wn.2d at 135. In *Go2Net*, this Court rejected waiver and estoppel defenses because the remedies provision of the WSSA, RCW 21.20.430, was modeled on Section 12(a)(2), yet specifically excluded Section 12(a)(2)'s due diligence defense. 158 Wn.2d at 254. Clearly the Court of Appeals' decision on reliance does not conflict with these holdings.

Third, this Court reached its decision in *Kittilson* after specific developments in the law of scienter that are not present in the case of reliance. In its 1976 *Ernst & Ernst v. Hochfelder* decision, the U.S. Supreme Court held that Rule 10b-5 requires a showing of scienter on the ground that its enabling statute, Section 10(b) of the Securities Exchange Act of 1934, contained the words "manipulative or deceptive". 425 U.S. 185, 197, 96 S. Ct. 1375, 47 L. Ed. 2d 668 (1976). One year

after *Hochfelder* was decided, the Washington Legislature struck analogous "fraud" and "misrepresentation" language from the WSSA. *See* Laws of 1977, Ex. Sess., ch. 172, § 4. This Court in *Kittilison* addressed the issue of scienter under the WSSA after these developments. This Court held that scienter is not an element under the WSSA, reasoning that *Hochfelder* is "inapplicable to our Securities Act" because "the 'manipulative or deceptive' language of [S]ection 10(b) of the 1934 act is not included in the [WSSA], . . . the language of Rule 10b-5 is not derivative but is the statute in Washington, [and] . . . no legislative history similar or analogous to Congressional legislative history exists in Washington". 93 Wn.2d at 226. The concerns with respect to Rule 10b-5's authorizing statute are not present for reliance, and there is no similar Washington legislative history. (*See* Section A.2.) There is no conflict.

4. The Court of Appeals' decision does not conflict with the principle that the WSSA be interpreted to protect investors.

FHLBS argues that the Court of Appeals' decision requiring reliance for a WSSA claim conflicts with this Court's principle that the WSSA be interpreted to protect investors. (Pet. 18.) This is wrong.

A reliance requirement is not anti-investor. The WSSA protects investors who need protection—those who were "wrongfully induced" to purchase a security on the basis of a false and misleading statement.

Hines, 114 Wn.2d at 134. The undisputed evidence established that FHLBS was *not* induced to make its purchase by the prospectus supplements, contrary to what it had alleged in its complaint. It had not even seen the prospectus supplements before it purchased the certificates.

FHLBS' request that this Court overrule decades of settled law because it purportedly "conflicts" with this Court's general principle that the WSSA be construed to protect investors is just a plea for a change in the law because FHLBS cannot establish its claim. Dissatisfaction with precedent is not grounds for review under RAP 13.4(b).[10]

As the U.S. Supreme Court stated with respect to Rule 10b-5, "[a]llowing recovery in the face of affirmative evidence of nonreliance—would effectively convert Rule 10b-5 into a scheme of investor's insurance. There is no support in the Securities Exchange Act, the Rule, or our cases for such a result". *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (internal quotation marks omitted). This same reasoning applies to the WSSA.

B. Review Should Not Be Granted Pursuant to RAP 13.4(b)(4) Because FHLBS' Petition Does Not Involve an Issue of Substantial Public Interest.

FHLBS claims that the "decision below . . . involves an issue of

[10] FHLBS cites this Court's decision in *Go2Net* as support for its argument that a reliance requirement is anti-investor. *Go2Net* clearly does not support this, since this Court recognized the WSSA's reliance requirement in that case. (*See* Section A.1.)

substantial public interest in the protection of investors in Washington." (Pet. 2.) This is not true. FHLBS' argument again comes down to its dislike of the current state of Washington law because it is unable to prove a crucial element of its claim. FHLBS' dissatisfaction with the current state of well-established Washington law is not a matter of "substantial public interest" and is not a reason for this Court to intervene. Moreover, as discussed above, investors like FHLBS who are not "wrongfully induced" to purchase securities do not need the protection of the WSSA. (*See* Section A.4.)[11]

Further, if this Court believed that settled Washington law requiring reliance under the WSSA was somehow an issue of substantial public interest, this Court would have granted review in other cases where this issue was raised in a petition for review. *See Kunkle*, 161 Wn.2d 1010 (denying review); *Stewart*, 153 Wn.2d 1022 (same). It did not.

C. FHLBS' Argument About Other States' Laws Is Irrelevant and Wrong.

Finally, Petitioner argues that the Court should grant review because some other states have held that reliance is not an element of their

[11] FHLBS' statements that Credit Suisse allegedly made misrepresentations in *other* prospectus supplements, not those at issue here, and that Credit Suisse purportedly violated SEC rules, which it did not, do not change the realities of FHLBS' case. (Pet. 8.) FHLBS cannot create an issue of public interest by attempting to revive arguments that were already rejected below and which FHLBS did not appeal. (*See supra* Notes 1, 2.)

securities laws. (Pet. 19.) FHLBS argues that the Court of Appeals' decision "puts Washington at odds" with securities laws in some other states, which do not require reliance. (Pet. 19.) FHLBS claims that the Court of Appeals thus failed to interpret the WSSA "to make uniform the law of those states which enact it". (Pet. 20 (quoting RCW 21.20.900).) This argument is wrong.

First, whether other states require reliance for a claim under their own securities laws is irrelevant to this Court's determination as to whether to grant review of the Court of Appeals' decision. *See* RAP 13.4(b). *Second*, even accepting FHLBS' characterization of other states' laws, all that FHLBS' argument shows is that some other states require reliance under their securities laws, while some states do not. In other words, by FHLBS' own admission, other states' laws are not uniform. (*See* Pet. 10-20.) Accordingly it is not clear how the Court of Appeals could have interpreted the WSSA to make it "uniform" with other states. *Third*, as FHLBS acknowledges, RCW 21.20.900 requires the interpretation of the WSSA to be "coordinate[d] . . . with the related federal regulation." This is exactly what the Court of Appeals did below.

V. CONCLUSION

For the foregoing reasons, this Court should deny review.

RESPECTFULLY SUBMITTED this 9th day of February, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused a copy of this document to be served via Washington State Courts' Portal to the following:

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I hereby certify, under penalty of perjury under the laws of the State of Washington and the United States, that the foregoing is true and correct.

DATED this 9th day of February 2018, at Seattle, Washington.

Heather Halverson
Legal Assistant

HILLIS CLARK MARTIN & PETERSON P.S.

February 09, 2018 - 3:49 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	Federal Home Loan Bank of Seattle v. Credit Suisse Securities (USA) LLC
Superior Court Case Number:	09-2-46353-1

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