Supreme Court No. 95436-4
Court of Appeals No. 75913-2-I

SUPREME COURT
OF THE STATE OF WASHINGTON

FEDERAL HOME LOAN BANK OF SEATTLE,

Petitioner,

v.

BARCLAYS CAPITAL INC.; BCAP LLC; and BARCLAYS BANK PLC,

Respondents.

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The Washington State Securities Act ("WSSA") requires a private investor to plead and prove that it reasonably relied on alleged misstatements and omissions in purchasing securities. Federal Home Loan Bank of Seattle's ("FHLBS") petition for review should be denied because the Court of Appeals simply applied this well-established requirement. FHLBS cannot point to any decision by this Court or the Court of Appeals that deviates from this settled law. Indeed, Washington courts have consistently and correctly confirmed that reliance is an element of the WSSA for nearly 50 years. Further, FHLBS's suggestion that this Court's precedent is wrong is simply unfounded in light of the WSSA's legislative history, and the fact that the Washington Legislature has amended the WSSA on several occasions over the last 50 years without changing the reasonable reliance requirement. Similarly baseless is FHLBS's contention that the reasonable reliance element should be read out of the WSSA because it purportedly conflicts with this Court's general statements that the purpose of the WSSA is to protect investors.

Nor does this case present an unsettled legal issue of public importance that should be resolved by the Court. It is simply an unremarkable example of a case where the losing litigant is unhappy with a court's correct application of well-established law to particular facts.

This Court should deny the petition and decline FHLBS's request for further review.

STATEMENT OF THE CASE

In the run-up to the financial crisis that began in 2007, FHLBS was one of the most sophisticated and voracious RMBS investors, amassing a portfolio of $8 billion worth of RMBS, including several RMBS backed by non-prime "Alt-A" mortgages. (CP 1618.) FHLBS made two of its last RMBS investments in February and April 2008 from Barclays—well after the housing and mortgage markets had embarked on a steep downward descent and at a point when the rest of its sister banks, and much of the market, had stopped purchasing such RMBS entirely. (CP 8, 38-39, 579-80, 3694-98.)

After the crash, FHLBS filed lawsuits against the underwriters of its investments, alleging virtually identical claims: that the securities underwriters "materially understated the risk" of the RMBS that FHLBS purchased. (CP 30 (¶ 76), 51 (¶ 137).)

During the five years of fact and expert discovery in the coordinated cases, the parties produced millions of pages of documents, deposed and defended over 100 fact witnesses, and collectively submitted over 90 expert reports. The evidence confirmed that FHLBS was at the epicenter of the burgeoning mortgage crisis and was well aware of the

very issues about which it now claims to have been deceived regarding allegedly inflated appraisals (and resulting understated loan-to-value ratios) and departures from underwriting guidelines in connection with the origination of the loans backing the RMBS it purchased.

King County Superior Court Judge Laura Inveen granted Barclays' motion for summary judgment, ruling correctly that FHLBS could not prove that it reasonably relied on any alleged misrepresentation made by Barclays when deciding to purchase these certificates.

FHLBS appealed the following two issues to the Court of Appeals: (i) whether the trial court erred in holding that reasonable reliance is an element of a claim for rescission under the WSSA that plaintiffs must plead and prove; and (ii) whether the trial court erred in deciding that there were no genuine issues of material fact as to its reasonable reliance. The Court of Appeals affirmed the trial court on both issues, based on well-established precedent and legislative history, as well as its *de novo* review of the extensive trial court record.

FHLBS now petitions this Court for review, requesting that the Court reverse decades of precedent and remove the reasonable reliance element from the WSSA.[1] Notably, FHLBS does not appeal the Court of

[1] FHLBS has also petitioned this Court to review the Court of Appeals decision affirming the trial court's entry of summary judgment for Credit Suisse, on the same basis.

Appeals' determination that FHLBS did not reasonably rely on any alleged misrepresentations. Faced with the Court of Appeals' conclusion that FHLBS was not misled in connection with its RMBS investments, FHLBS now asks this Court to alter Washington law in order to allow FHLBS to rescind RMBS investments it chose to make during the financial crisis.

ARGUMENT

I. Review Should Not Be Granted Because the Court of Appeals Decision Does Not Conflict with Washington WSSA Jurisprudence.

A. This Court has confirmed that a WSSA claim requires a showing of reasonable reliance.

This Court held in *Hines v. Data Line Systems, Inc.* that to establish a claim under the WSSA, a plaintiff must demonstrate that it "*relied on* . . . misrepresentations in connection with the sale of the securities." 114 Wn.2d 127, l34, 787 P.2d 8 (1990) (emphasis added). More recently, in *Go2Net, Inc. v. Freeyellow.com, Inc.*, this Court held that the jury's findings—which included plaintiff's reliance on a material misrepresentation or omission—established a violation of the WSSA. 158 Wn.2d 247, 251, 143 P.3d 590 (2006).

FHLBS attempts to ignore the clear import of these decisions by mischaracterizing the *Hines* holding regarding reliance as mere "dictum." FHLBS is wrong. *Hines* presented this Court with the

question of what elements must be proven to prevail on a WSSA claim. The parties in that case disagreed about whether plaintiffs needed to only show transaction causation (*i.e.*, that plaintiff relied on the alleged misrepresentations in entering into the transaction[2])—or had to prove both transaction causation/reliance and loss causation (*i.e.*, that the alleged misrepresentations were the proximate cause of plaintiff's alleged losses).[3] While this Court declined to require loss causation, it made clear that reliance *is* an element of a WSSA claim. *See Hines*, 114 Wn.2d at 134 (stating that under the WSSA, investors must "show that the misrepresentations were material and that they relied on the misrepresentations in connection with the sale of the securities"). This Court further concluded that the undisputed facts in *Hines* "substantiate[d] that each investor relied on [the challenged] statements." *Id*. Thus, this Court affirmed in no uncertain terms that reliance is an element of a WSSA claim.

Even if the Court's ruling in *Hines* could be characterized as dictum, this Court's review is unwarranted here because there is no

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[2] *See, e.g.*, *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005) (noting that reliance is often referred to as "transaction causation").

[3] *See* Brief for Appellants at 58-65, *Hines v. Data Line Sys., Inc.*, 114 Wn.2d 127 (No. 20506-4-I) (attached as Appendix I to Respondents' Brief to the Court of Appeals below); *see also* Brief for Respondents at 31-34, *Hines v. Data Line Sys., Inc*., 114 Wn.2d 127 (No. 20506-4-I) (attached as Appendix II to Respondents' Brief to the Court of Appeals below).

conflict between the Court of Appeals' opinion below and this Court's precedent. Rule 13.4 permits discretionary review where the Court of Appeals decision *conflicts with* a decision of the Supreme Court. RAP 13.4(b)(1). Here, there is no inconsistency (much less a conflict) between *Hines* and the Court of Appeals decision. FHLBS cannot create the required decisional conflict simply by arguing that this Court must have intended to say the exact opposite of what it so clearly stated in *Hines*.

Nor can FHLBS manufacture a conflict by claiming that a reasonable reliance requirement is at odds with this Court's WSSA jurisprudence concerning other elements of, and defenses to, WSSA claims. For example, FHLBS makes much of this Court's holding in *Go2Net*, where this Court rejected the defendant's equitable defenses of waiver and estoppel based on its assessment that permitting those defenses would undermine the WSSA's purpose of protecting investors. But this Court's reasoning—that the seller of securities should not be permitted to "avoid statutory liability by shifting the focus [from his presale misrepresentations and omissions] to the postsale conduct of the uninformed investor"—is inapplicable to the reasonable reliance requirement. *Go2Net*, 158 Wn.2d at 254. First, the reasonable reliance inquiry does not focus on an investor's postsale conduct but on its *presale* knowledge and expectations. Second, because the reasonable reliance

element takes into account what an investor knows (or should know based on the information available to it), it does not affect investors who are uninformed about the alleged misrepresentations. FHLBS is seeking to change the law in order to avoid the fact that, as noted by the Court of Appeals, it was one of the most sophisticated participants in the RMBS market and possessed extensive knowledge of the very matters about which it later claimed to have been misled. *See Fed. Home Loan Bank of Seattle v. Barclays Capital, Inc.*, 1 Wn. App. 2d 551, 565-73, 406 P.3d 686 (2017).

Similarly, this Court's holdings that scienter and loss causation—both elements of Rule 10b-5 claims—are not required under the WSSA do not conflict with the holding that reliance is an element of a WSSA claim. Washington courts have expressly struck those other two elements, but confirmed repeatedly that reasonable reliance *is* required under the WSSA. Scienter and loss causation were rejected as elements of WSSA claims for specific reasons related to amendments to the statute, and legislative history, that are inapplicable to the separate reliance requirement.

This Court held that scienter is not an element under the WSSA in *Kittilson v. Ford*. 93 Wn.2d 223, 225, 608 P.2d 264 (1980). *Kittilson* considered the United States Supreme Court's decision in *Ernst*

& Ernst v. Hochfelder, which held that scienter is an element of a Rule 10b-5 claim. 425 U.S. 185, 201 (1976). This Court focused on the fact that *Hochfelder* was not based on the text of Rule 10b-5, but was instead based upon language from the Rule's enabling statute, Section 10(b) of the Securities Exchange Act of 1934, which was not included in Rule 10b-5. *Id.* at 212-14. Furthermore, the WSSA had been amended, after *Hochfelder*, to remove the terms "fraud" and "misrepresentation" from the statute. *Kittilson*, 93 Wn.2d at 226-27. Thus, in *Kittilson*, 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 section 10(b) of the 1934 act [from which the scienter requirement is derived] is not included in the Washington act [and] . . . no legislative history similar or analogous to Congressional legislative history exist[ed] in Washington." *Id.* at 226.

Similarly unfounded is FHLBS's suggestion that this Court's holding in *Hines* that the WSSA does not require proof of *loss causation* should be interpreted to suggest that the WSSA does not require reasonable reliance. In fact, *Hines* held the exact opposite—that investors must show "that they relied on the misrepresentations" even though the WSSA does not require a showing that the "misrepresentations were the proximate reason for their investments' decline in value." *Hines*, 114

Wn.2d at 134-35. In contrast to reasonable reliance, loss causation is not an element of the WSSA because, as this Court explained, the statutory remedy for a WSSA violation is rescission, *see* RCW 21.20.430, which permits "an investor who is wrongfully induced to purchase a security [to] recover his investment without any requirement of showing a decline in the value of the stock." *Id.* at 135.

B. The Court of Appeals decision does not conflict with any other Washington court opinions, all of which confirm that a WSSA claim requires a showing of reasonable reliance.

Consistent with this Court's decisions in *Hines* and *Go2Net*, every court in this State that has considered whether reliance is an element of a WSSA claim has held that it is. *See, e.g.*, *FutureSelect Portfolio Mgmt. Inc. v. Tremont Grp. Holdings, Inc.*, 175 Wn. App. 840, 867-68, 309 P.3d 555 (2013) ("To establish a claim under the WSSA, an investor must prove that . . . [he] relied on those misrepresentations or omissions. Such reliance must be reasonable under the surrounding circumstances."); *Helenius v. Chelius*, 131 Wn. App. 421, 439 n.22, 120 P.3d 954 (2005) (referring to "reasonable reliance on a misrepresentation" as part of plaintiff's "prima facie claim" under the WSSA); *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 109, 86 P.3d 1175 (2004) ("The WSSA also requires reliance upon the alleged misrepresentations or

omissions."); *Stewart v. Estate of Steiner*, 122 Wn. App. 258, 264, 93 P.3d 919 (2004) (describing reasonable reliance as an "essential element to prove a claim under the WSSA"); *Shermer v. Baker*, 2 Wn. App. 845, 858, 472 P.2d 589 (1970) (holding that to establish liability under the WSSA, the plaintiff must show that it "relied upon the misrepresentation or omission of a material fact").[4]

The Court of Appeals below followed this unbroken string of precedent, again confirming that reasonable reliance is an element of a WSSA claim. In a unanimous decision authored by Judge Cox and joined by Judges Spearman and Schindler, the Court of Appeals concluded that "the state legislature enacted RCW 21.20.010(2)[, the relevant WSSA liability provision,] with the intent that it be construed in the same way as Rule 10b-5 and have the same interpretation as federal case law of that rule. In short, reasonable reliance is a necessary element of this state claim." *Fed. Home Loan Bank of Seattle v. Barclays Capital, Inc.*, 1 Wn. App. 2d at 559. The Court of Appeals found "telling" the fact "that since Washington courts began recognizing a reliance requirement in 1970, the legislature has amended the WSSA eight times" without once

[4] *See also Graham-Bingham Irrevocable Trust v. John Hancock Life Ins. Co. USA*, 827 F. Supp. 2d 1275, 1284 (W.D. Wash. 2011) ("To establish a claim under the WSSA, an investor must prove . . . [it] relied on those misrepresentations or omissions."); *Moore v. Thornwater Co. LP*, No. C01-1944C, 2006 WL 1423535, at *6 (W.D. Wash. May 23, 2006) (noting that "reliance must be reasonable to prove a WSSA violation").

"modify[ing] the requirement that reliance is a required element." *Id.* at 559-60. The Court of Appeals further noted that "in no case has any Washington court departed from this interpretation of the statute," which "has been consistently stated by the state [S]upreme [C]ourt and other appellate courts of this state." *Id.* at 560.

This Court previously denied the petition to review the Court of Appeals 2004 *Stewart v. Estate of Steiner* decision, authored by Judge Cox, in which the Court of Appeals held, based on *Hines*, that a plaintiff suing under the WSSA must show reasonable reliance on the alleged misrepresentations. *Stewart v. Steiner*, 153 Wn.2d 1022, 108 P.3d 1229 (Table) (Mar. 1, 2005). The Court should again decline the invitation to cast aside almost 50 years of consistent precedent holding that reasonable reliance is an element of a WSSA claim.

C. The Court of Appeals decision does not conflict with jurisprudence concerning the purpose of the WSSA.

FHLBS's last-ditch attempt to create a judicial conflict is to argue that the reasonable reliance requirement is philosophically inconsistent with general statements that Washington courts have purportedly made about the WSSA and its purpose. In so doing, FHLBS asks the Court to disregard almost 50 years of clear and consistent

precedent based on mischaracterizations and *dicta* that do not, in any event, conflict with this Court's holdings.

There is no conflict between a reasonable reliance requirement and jurisprudence that FHLBS claims characterizes the WSSA as a "strict liability" statute. As an initial matter, FHLBS does not point to any express statements by a Washington court that the WSSA is a "strict liability" statute. FHLBS's contention is based entirely on its argument that the WSSA was modeled after Section 12(a)(2) of the Securities Act of 1933 and that Section 12(a)(2) calls for strict liability. (Pet. at 10-11.) As discussed below, however, FHLBS is wrong; the substantive liability provision of the WSSA, RCW 21.20.010, was plainly modeled after SEC Rule 10b-5. The cases cited by FHLBS about similarities between Section 12(a)(2) and the WSSA discuss only the remedial section of the WSSA, RCW 21.20.430, which has no bearing on whether RCW 21.20.010 provides for strict liability.[5]

Nor is there any conflict between a reasonable reliance requirement and jurisprudence that the WSSA is to be interpreted to protect investors. A broad statement of legislative purpose cannot

[5] *See Hoffer v. State*, 113 Wn.2d 148, 152, 776 P.2d 963 (1989) (holding that the Court would "retain the 'substantial contributive factor' test in interpreting the term 'seller' in RCW 21.20.430(1)"); *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 124-26, 744 P.2d 1032 (1987) (discussing the definition of "seller" under RCW 21.20.430).

override the clear legislative history of the WSSA regarding reasonable reliance. Regardless, FHLBS has no support for its argument that a conflict exists. Tellingly, FHLBS cites to no case in which any court (or any instance in which the Washington Legislature) expressed concern that investors were not being adequately protected because reliance is an element of a WSSA claim. To the contrary, Washington courts have repeatedly held that reliance is an element under the WSSA while simultaneously recognizing that the WSSA should be interpreted to protect investors.[6]

Here, after years of fact discovery, FHLBS's claims were dismissed because it failed to demonstrate a genuine issue of material fact as to whether it reasonably relied on Barclays' alleged misrepresentations. Those facts are not inconsistent with the WSSA's purpose of protecting investors from being misled. The Washington Legislature did not intend for the WSSA to serve as investor insurance, nor is there any case law that supports such a proposition.[7]

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[6] *See, e.g.*, *Stewart*, 122 Wn. App. at 264 ("To establish liability under the WSSA, the purchaser of a security must prove that . . . the purchaser relied on those misrepresentations or omissions. Because the primary purpose of the WSSA is to protect investors, we construe it liberally."); *accord Guarino*, 122 Wn. App. at 109; *FutureSelect*, 175 Wn. App. at 868; *Go2Net*, 158 Wn.2d at 253; *Hines*, 114 Wn.2d at 145.

[7] The U.S. Supreme Court has also noted that allowing plaintiffs to recover under the analogous Rule 10b-5 absent proof that they reasonably relied on the alleged misstatements "would effectively convert Rule 10b-5 into a scheme of investor's

II. This Court's Precedent Is Squarely Based on the Statute and the Washington Legislature's Intent.

FHLBS's contention that this Court, and every other Washington court, has been repeatedly mistaken in holding that reasonable reliance is an element of the WSSA does not provide a basis for review. *See* RAP 13.4(b). In any event, FHLBS's contention is entirely unfounded. RCW 21.20.010, the WSSA's substantive liability provision, tracks the SEC's Rule 10b-5 almost word for word. When the WSSA was enacted in 1959, Rule 10b-5 required plaintiffs to prove reasonable reliance, as it still does today. As demonstrated *supra*, Washington courts have likewise held (and unanimously so) that plaintiffs must plead and prove reliance to recover under the WSSA. In the face of those decisions, the Washington Legislature has never sought to exclude the WSSA's reasonable reliance requirement, even though it has amended the WSSA multiple times since its enactment.

Washington courts have routinely recognized that RCW 21.20.010 was based on Rule 10b-5 and intended to be interpreted in parallel therewith. *See, e.g.*, *Clausing v. DeHart*, 83 Wn.2d 70, 72, 515 P.2d 982 (1973) (WSSA "is patterned after and restates in substantial part the language of the federal Securities Exchange Act of 1934"); *Guarino*,

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insurance"—a result for which "[t]here is no support in the Securities Exchange Act, the Rule, or our cases." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345 (2005).

122 Wn. App. at 109 ("The related federal regulations [to RCW 21.20.010] are Section 10(b) [and] Rule 10b-5."); *Shermer*, 2 Wn. App. at 849-50 ("It seems inconceivable to us that the legislature, in 1959, could have intended that RCW 21.20.010 created for intrastate commerce something different from what Rule 10b-5 created for interstate commerce"). Indeed, the language of RCW 21.20.010 is substantively identical to Rule 10b-5:

SEC Rule 10b-5	**RCW 21.20.010**
"It shall be unlawful for any person … in connection with the purchase or sale of any security …	"It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:
(a) To employ any device, scheme, or artifice to defraud,	(1) To employ any device, scheme, or artifice to defraud;
(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or	(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . . ."	(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

Reliance was a required element under Rule 10b-5 when RCW 21.20.010 was enacted in 1959, and remains a requirement today. *See, e.g.*, *Reed v. Riddle Airlines*, 266 F.2d 314, 319 (5th Cir. 1959); *Speed*

v. Transamerica Corp., 5 F.R.D. 56, 60 (D. Del. 1945); *see also Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2418 n.1 (2014) ("a private plaintiff must prove . . . reliance upon the misrepresentation or omission") (citation omitted). FHLBS provides no evidence that when the Legislature enacted RCW 21.20.010, it intended to carve out reasonable reliance. This should come as no surprise, as this Court has held when the Legislature enacts a statute that is modeled almost verbatim from a federal statute, the state statute "carries the same construction as the federal law and the same interpretation as federal case law." *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 868, 281 P.3d 289 (2012).

If the deliberate decision to model the WSSA's liability provision after Rule 10b-5 were not enough to confirm the Legislature's intent to require a showing of reasonable reliance, the Legislature's post-enactment acquiescence to nearly 50 years of court decisions finding that reliance is an element of a WSSA claim should remove all remaining doubt. As this Court has noted, the Legislature is presumed to be "aware of judicial interpretations of its enactments and . . . failure to amend a statute following a judicial decision interpreting that statute [indicates] legislative acquiescence." *City of Fed. Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009); *see also 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."). In 1970, the Court of Appeals confirmed in *Shermer v. Baker* that "i[n] an action brought under RCW 21.20.010," a plaintiff must establish that it "relied upon the misrepresentation or omission of a material fact." 2 Wn. App. 845, 858, 472 P.2d 589 (1970). Since the *Shermer* opinion, the Legislature has amended the WSSA eight times[8] but has never excluded reliance as an element. Similarly, Washington courts have since handed down numerous decisions confirming that reasonable reliance is an element under the WSSA. (*See supra* at 9-10.)

The Legislature's inaction in the face of those decisions demonstrates that (i) the courts have *not* consistently misinterpreted the WSSA, and (ii) the Legislature has *not* needed to clarify its intent. *See Wade v. Skipper's, Inc.*, 915 F.2d 1324, 1332 (9th Cir. 1990) (observing that the WSSA's amendments "demonstrate [the Washington Legislature's] willingness and ability to correct its own omissions").

[8] 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.

III. Out-of-State Courts' Interpretations of their Own States' "Blue Sky" Laws Are Categorically Irrelevant.

Lacking a single Washington case holding that reasonable reliance is not an element of a WSSA claim (because no such case exists), FHLBS refers this Court to decisions of courts from other jurisdictions holding that other states' securities laws do not require plaintiffs to show reasonable reliance. Those decisions are irrelevant.

As a threshold matter, whether Washington courts interpret the WSSA differently from how other states interpret their own securities laws does not provide a basis for review. *See* RAP 13.4(b). Moreover, only Washington courts can issue binding and authoritative decisions as to the meaning of Washington laws. *See In re Petersen*, 138 Wn.2d 70, 80-81, 980 P.2d 1204 (1999). As discussed above, Washington courts have unanimously held that the WSSA requires proof of reasonable reliance.[9] More importantly, the decisions that FHLBS highlights do not even involve the WSSA. They refer to different statutes with different

[9] Other states' courts have also recognized that the WSSA requires reasonable reliance as an element of a WSSA claim, even if their state statutes do not. *See, e.g.*, *Eagle Fund, Ltd. v. Sarkans*, 63 Mass. App. Ct. 79, 84, 823 N.E.2d 783 (2005) ("In contrast . . . reasonable reliance is a requirement under § 21.20.010(2) of the Securities Act of Washington.") (citing *Hines*).

legislative histories. Therefore, FHLBS's observations about other states' securities laws do not support review.[10]

IV. This Appeal Does Not Involve an Issue of Substantial Public Interest that the Supreme Court Should Decide.

FHLBS suggests that this Court should review the Court of Appeals decision merely because it "involves an issue of substantial public interest in the protection of investors in Washington." (Pet. at 2.) As an initial matter, the fact that this case involves the WSSA does not *ipso facto* create an issue of substantial public interest. Further, as demonstrated above, the reasonable reliance element is not in tension with the protection of investors in Washington. In addition, FHLBS misstates the applicable standard, which allows for review where an appellate decision "involves an issue of substantial public interest ***that should be determined by the Supreme Court***." RAP 13.4(b)(4) (emphasis added). The elements of a WSSA claim were determined by—and consistently reaffirmed by—the Washington Legislature. And Washington courts have held unanimously for almost 50 years that plaintiffs must prove reliance under the WSSA. This settled issue is not something on which further Supreme Court guidance is required.

[10] FHLBS is also wrong in its assessments of some of the other states that it claims do not require reliance, including, for example, Oregon. *See State v. Marsh & McLennan Cos.*, 353 Or. 1, 14, 292 P.3d 525 (2012) ("[A] purchaser of securities on the open market must establish some form of reliance . . . in order to establish a claim for damages under [Oregon's] ORS 59.137."). Further, FHLBS concedes that Washington is not an outlier but is just one of several states whose courts have held that their securities laws require a showing of reliance. (Pet. at 18-19.)

CONCLUSION

The Court of Appeals' opinion below follows nearly a half-century of judicial precedent about the elements of a WSSA claim and is consistent with the WSSA's legislative history. Accordingly, this Court should deny FHLBS's petition for review.

Dated: February 9, 2018

Respectfully submitted,

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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 email to the last known address of all counsel of record.

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.

*/s/Michele Smith*_____
Michele Smith

HILLIS CLARK MARTIN & PETERSON P.S.

February 09, 2018 - 3:08 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	Federal Home Loan Bank of Seattle v. Barclays Capital, Inc., et al.
Superior Court Case Number:	09-2-46320-4

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