Supreme Court No. 96262-6

(Court of Appeals, Div. I No. 76630-9-I)

THE SUPREME COURT

STATE OF WASHINGTON

FREEDOM FOUNDATION,
Appellant/Defendant,

v.

UNIVERSITY OF WASHINGTON,
Respondent/Defendant,

and

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 925,
Respondent/Plaintiff,

RESPONDENT SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 925'S ANSWER IN OPPOSITION TO PETITION FOR DISCRETIONARY REVIEW BY THE SUPREME COURT

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I. INTRODUCTION AND IDENTITY OF RESPONDENT

After losing at the trial court and Court of Appeals, the Freedom Foundation ("Foundation") now seeks discretionary review of a permanent injunction order enjoining Public Records Act ("PRA") release of non-public records: personal and private emails of University of Washington ("UW") Professor Robert Wood ("documents at issue"). These documents include emails related to faculty union organizing for a union not certified to represent faculty, emails of a private non-profit organization, and other personal and private emails. The trial court and the Court of Appeals correctly determined that the records at issue are not, by statutory definition, public records because they do not relate to the conduct of government or the performance of a governmental or proprietary function and are not within the scope of employment. The Foundation raises no issues warranting review under RAP 13.4(b). There is no conflict between the decision of the Court of Appeals and established precedent, and the decision does not involve an issue of substantial public interest. Further, the Foundation advances arguments in its petition it could have but did not timely raise at the lower courts. These issues cannot serve as bases for acceptance of discretionary review. Respondent Service Employees International Union Local 925 ("SEIU 925" or "Union"), the plaintiff at

the trial court and the respondent at the Court of Appeals, respectfully requests that this Court deny the Foundation's petition for review.

II. ISSUES PRESENTED

Whether the petition for review should be denied because it raises issues not raised at the trial court or the Court of Appeals prior to that Court's June 11, 2018 decision.

Whether this Court should grant review of the Court of Appeals decision, which does not conflict with a decision of this Court or a published decision of any Court of Appeals and involves no issue of substantial public interest.

III. STATEMENT OF THE CASE

This case involves a PRA request by the Foundation to UW, which, on its face, does not seek material related to the conduct of government or the performance of a governmental or proprietary function. It requests emails to and from private accounts (@seiu925.org and @uwfacultyforward.org), information about non-UW issues (including "right to work," "Freedom Foundation," and "Freidrichs"), and emails on the listserver of a private non-profit organization, the UW chapter of the American Association of University Professors ("AAUP").[1]

[1] Specifically, the Foundation requested:

No union was or is certified to represent faculty at UW, although SEIU 925 is working with faculty at UW interested in organizing a union. CP 34. The UW chapter of the AAUP is a non-profit organized under Section 501(c)(6) of the Internal Revenue Code. CP 100. The UW AAUP chapter's listserver is open, with approval, to individuals outside UW. *Id.*

Professor Wood is a tenured Professor in the Department of Atmospheric Sciences at UW, and has held various professor titles in that Department since 2004. CP 99-100. He is a member of SEIU 925, and for the relevant period served as chapter President of the UW chapter of the AAUP. CP 100. Professor Wood's union and AAUP activities are outside the scope of his job duties and responsibilities at UW. CP 101, 107-14.

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1. All documents, emails or other records created by, received by, or in the possession of University of Washington faculty/employees Amy Hagopian, Robert Wood, James, Liner, or Aaron Katz that contain any of the following terms:
   a. Freedom Foundation (aka., "FF," "EFF," and "The Foundation")
   b. Northwest Accountability Project
   c. Right-to-work (aka., "right to work," "RTW,", and "R2W")
   d. Friedrichs v. California Teachers Association (aka., "Friedrichs v. CTA" and "Friedrichs")
   e. SEIU
   f. Union
2. All emails sent by University of Washington faculty/employees Amy Hagopian, Robert Wood, James Liner, or Aaron Katz to any email address ending in "@seiu925.org" or "@uwfacultyforward.org"
3. All emails received by University of Washington faculty/employees Amy Hagopian, Robert Wood, James Liner, or Aaron Katz from any email address ending in "@seiu925.org" or "@uwfacultyforward.org"
4. All emails sent from and received by the following email address: aaup@u.washington.edu

CP 36.

The UW Office of Public Records asked Professor Wood to search his records for documents responsive to the Foundation request. CP 101-02. UW treats its employees as "custodians of [their] records" for the purpose of providing a PRA response. CP 219. UW directed Professor Wood to search his own email accounts for records potentially responsive to the request. *Id.* Professor Wood provided to the UW office emails sent and received at his UW email and his personal, non-UW email address. CP 102. Professor Wood did not further screen or review the emails to determine which were not public records. *Id.* Following review of the documents from Professor Wood, Perry Tapper of the UW Office of Public Records declared that he "was unable to determine that the records were *not* public records." CP 220 (emphasis in original). Tapper did not determine that any of the records *are* public records. *Id.*

After receiving notification that UW intended to release documents to the Foundation, SEIU 925 on April 25, 2016 filed a complaint in King County Superior Court on its own behalf and on behalf of Professor Wood. King County Superior Court Judge Jeffery Ramsdell issued a temporary restraining order on June 10, 2016. CP 267-70. A portion of the temporary restraining order required SEIU 925 to "show by affidavit cataloging and describing with sufficient particularity as to the status of the records as public or not public records." CP 267-70.

Pursuant to the order, SEIU 925 filed declarations in July and August 2016 identifying 102 pages of public records and categorizing the non-public record documents in one or more of the following:

- emails and documents about faculty organizing including emails containing opinions and strategy in regard to faculty organizing and direct communication with SEIU 925;
- postings to the AAUP UW Chapter listserver;
- personal emails and/or documents unrelated to any UW business;
- personal emails sent or received by Professor Wood in his capacity as AAUP UW chapter president and unrelated to UW business.

CP 950-53, 955-56, 968-71, 973-82, 984-987. Some emails were sent or received on Professor Wood's private, non-UW email address. CP 104. Many emails are duplicates and are part of email chains. CP 981, 952, 965, 971. Some emails were merely received by Professor Wood. CP 102.

UW released the 102 pages identified as public records to the Foundation on July 6, 2016. CP 1010. The non-public records remaining after release of the 102 pages are the "documents at issue."

The trial court issued a preliminary injunction on August 6, 2016. CP 291-97. On October 12, the trial court denied the Foundation's request for reconsideration of the preliminary injunction. CP 313-14. The trial court issued a permanent injunction on March 27, 2017. CP 686-96. At no time did the Foundation seek interlocutory review or file a motion for in camera review or any pleading to call for more particular categorizations,

including during the eight-month period between the filing of the declarations and the permanent injunction hearing.

The Foundation appealed the permanent injunction order. The Court of Appeals affirmed on June 11, 2018. The Court denied the Foundation's motion for reconsideration and granted a motion to publish on August 2, 2018. Throughout its briefing at the trial court and Court of Appeals, SEIU 925 asserted that the documents at issue are not, by definition, public records subject to release because they are not within the scope of employment and do not relate to the conduct of government or the performance of a governmental or proprietary function.[2] Before the trial court and at the Court of Appeals, UW consistently took no position on whether the records at issue are public records under the PRA. UW also asserted throughout the litigation that, given immense liability on governments for non-disclosure, it would disclose a record whether or not it made the determination of its public record status.

IV. ARGUMENT

A. The Petition for Review Should Be Denied Because It Raises Issues Not Raised at the Trial Court or the Court of Appeals Prior to the Court of Appeals' June 11, 2018 Decision.

The Foundation seeks review on several theories, after having failed to raise most of them at the trial court or the Court of Appeals prior

[2] The Foundation's statement that "[n]o party has asserted to any court that the records do not contain information related to the conduct of government" [Petition, 4] is false.

to that Court's June 11 decision. "[E]xcept as to issues of manifest error affecting a constitutional right, issues not raised at the trial court or the Court of Appeals cannot be raised for the first time before the Supreme Court." *Buhsieb/Danard, Inc. v. Skagit County,* 99 Wn.2d 577, 581, 663 P.2d 487 (1983). "The purpose of this rule is to allow the trial court the opportunity to consider all issues and arguments and correct any errors, in order that unnecessary appeals will be avoided." *State v. Cooley,* 48 Wn.App. 286, 290, 738 P.2d 705 (1987), *rev. denied,* 109 Wn.2d 1002 (1987); *see also State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). The Foundation's failure to timely raise issues asserted in its petition – which are addressed in detail below – requires denying discretionary review on any of those issues.

B. The Petition for Review Should Be Denied Because the Court Of Appeals Decision Does Not Conflict With This Court's Precedent or Court of Appeals Decisions.

The petition for review should be denied because the Court of Appeals decision does not conflict with *Nissen*[3] or *West*,[4] the only cases identified by the Foundation as in conflict with the decision. *See* RAP

[3] *Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015).
[4] *West v. Vermillion*, 196 Wn.App 627, 384 P.3d 634 (2016), *rev. denied*, 187 Wn.2d 1024, 390 P.3d 339 (2017).

13.4(b)(1) and (2). The Court of Appeals diligently followed *Nissen*.[5] It correctly began its analysis with the statutory definition of public record:

> [1] any writing [2] containing information relating to the conduct of government or the performance of any governmental or proprietary function [3] prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

SEIU 925 v. Univ. of Wash., 4 Wn.App.2d 605, 617-18, 423 P.3d 849 (2018); *see also* RCW 42.56.010(3); *Nissen*, 183 Wn.2d at 874. The Court of Appeals appropriately determined that records must meet this definition to be public records subject to disclosure under the PRA. *SEIU 925*, 4 Wn.App.2d at 621; *see also Nissen*, 183 Wn.2d at 874.

The Court of Appeals continued its adherence to *Nissen*, quoting the following passage:

> For information to be a public record, an employee must prepare, own, use or retain it within the scope of employment. An employee's communication is "within the scope of employment" only when the job requires it, the employer directs it, or it furthers the employer's interests. This limits the reach of the PRA to records related to the employee's public responsibilities.

SEIU 925, 4 Wn.App.2d at 618; *Nissen*, 183 Wn.2d at 878-89.

Relying upon *Nissen*, the Court of Appeals reasoned that it "must determine whether [UW Professor Robert Wood] created the records within his scope of employment." *SEIU 925*, 4 Wn.App.2d at 619; *Nissen*,

[5] Where a court of appeals applies the principles of a Supreme Court case, review will not be granted under RAP 13.4(b)(1). *See In re Dependency of P.H.V.S.*, 389 P.3d 460 (2015).

183 Wn.2d. at 878; *West,* 196 Wn.App. at 641. The Court of Appeals, citing *Nissen,* stated a document is within the scope of employment only "when the job requires it, the employer directs it, or it furthers the employer's interests." *SEIU 925,* 4 Wn.App.2d at 619*; Nissen,* 183 Wn.2d at 878-79. The Court appropriately found that emails regarding union organizing and the AAUP, and other personal emails are not required by Professor Wood's position or directed by UW, and they do not further UW's interests. *SEIU 925,* 4 Wn.App.2d at 620; CP 99-114.

Thus, the Court of Appeals correctly concluded that "[d]ocuments relating to faculty organizing and addressing faculty concerns are not within the scope of employment, do not relate to the UW's conduct of government or the performance of government functions, and thus are not 'public records' subject to disclosure." *SEIU 925,* 4 Wn.App.2d at 620.

1. The Court of Appeals' Scope of Employment Analysis Adheres To And Does Not Conflict With *Nissen.*

Despite the Court of Appeals' steadfast adherence to *Nissen,* the Foundation claims conflict. The Foundation avers that "[t]he *Nissen* Court made clear that the scope of employment test only addressed the third prong [of the definition of public record], which is not at issue here." Petition, 5. The Foundation never raised this issue in any of its briefing

prior to the Court of Appeals June 11, 2018 decision. As a result, as set forth in Section IV.A., it cannot provide a basis for discretionary review.

The Court of Appeals' application of the scope of employment test to a professor's search of his emails does not conflict with *Nissen*. This Court in *Nissen* applied scope of employment to employee text messages, where both the second and third prongs of the definition of public record were at issue. *See, e.g.,* 183 Wn.2d at 875, 878, 880. In applying scope of employment to text messages, *Nissen* found that because a county prosecutor "sent and received text messages in his official capacity" and "within the scope of his employment" such messages implicated *all three elements* of the definition of public record (the parties did not dispute that the messages satisfied the first element, a writing). *Id.* at 882-83.

In addition, nothing in *Nissen* expressly limits the scope of employment test to private devices and accounts, as recognized by the Court of Appeals. *SEIU 925,* 4 Wn.App.2d at 623. This Court stated in *Nissen* that its "task instead is to decide if *records* that a public employee generates while working for an agency are "public records" that the agency must disclose." 183 Wn.2d at 875-76 (emphasis in original). A footnote to that statement further emphasizes that "[t]he relevant question then is not whether Lindquist is individually subject to the PRA but, rather, whether *records he handles in his capacity as the prosecutor* are

public records." *Id.* 875, fn 6 (emphasis added). Thus, the relevant factor is not where a record is stored, but its content and relationship to government conduct. *Id.* at 880.

Applying the scope of employment test beyond private devices and emails makes sense, as documents an employee creates within the scope of employment contain material that relates to the conduct of government or the performance of a governmental or proprietary function and excludes documents that do not. *See, e.g., Belenski v. Jefferson County*, 187 Wn.App. 724, 735, 350 P.3d 689 (2015) (where county employees use the internet to perform their government work, logs reflecting this *work-related* use relate to the conduct of government or the performance of a governmental or proprietary function).

Further, the way in which UW responded to the PRA request here supports application of the scope of employment test. UW treated Professor Wood as a "custodian of records" and asked him to search his own records for documents responsive to the Foundation's request. CP 387-89. This is the same posture as *Nissen*, where a county prosecutor was asked to review his own text messages.

No party here disputes that the messages were *not* created within the scope of employment. Thus, they cannot be public records in connection with the second prong, the third prong, or both. The Court of

Appeals was correct in finding that the documents at issue are not public records because they are not within the scope of employment.

That some of the records were received or sent using a UW email domain does not create a conflict with *Nissen*. The Foundation asserts that UW "has as property" and "owns" the records requested because they are on a "tax-payer-funded server" thus the scope of employment test does not apply. Petition, 8. This, too, is an argument not raised by the Foundation prior to the Court of Appeals' June 11, 2018 decision and therefore cannot serve as a basis for granting review. *See* Section IV.A. Further, this assertion mischaracterizes the facts of this case. While some of the documents at issue were sent or received at a UW email address, some were not. A blanket statement that all of the records were on a "tax-payer-funded server" [Petition, 8] is simply untrue. Finally, as explained above, the Court of Appeals properly applied the scope of employment analysis to preclude disclosure of the documents at issue here.

2. The Court of Appeals Decision Does Not Conflict with *West*.

The Foundation also incorrectly contends that the Court of Appeals' decision conflicts with *West*. Petition, 9. In doing so, the Foundation cites to a section of that case addressing the argument of the elected official that the PRA applied differently to him as an elected

legislative official rather than an elected *executive* official. *West*, 196 Wn.App at 640; Petition, 9. No such argument is being made here. In rejecting that argument in *West*, the court noted that "[a] record subject to disclosure under the PRA is not contingent on its possessor's ability to take unilateral action on behalf of the agency," as the official argued that an executive official does. *West*, 196 Wn.App at 641. Instead, the *West* court articulated that the "scope of employment" test is the appropriate test for determining whether a record is subject to PRA disclosure. *Id.* Thus there is no conflict with *West*, which expansively applies the scope of employment test. *Id*.

3. The Court of Appeals Correctly Held That The Documents at Issue Do Not Relate to the Conduct of Government or the Performance of a Governmental or Proprietary Function and There Is No Conflict with *Nissen*.

The Court of Appeals properly held that a record that does not relate to the conduct of government or the performance of a governmental or proprietary function is not a public record subject to PRA release. *SEIU 925*, 4 Wn.App. at 620. Where a document is not created within the scope of employment, it is not a public record. That is determinative in resolving this case. Additionally the Foundation apparently claims that the Court of Appeals should have applied a "refers to state action" test. As with other

Foundation assertions addressed above, this untimely argument cannot serve as the basis for discretionary review. *See* Section IV.A.

Once again, the Foundation incorrectly quotes and mischaracterizes *Nissen*. The *Nissen* court actually stated that "[t]ogether, [*Confederated Tribes*[6] and *Oliver*[7]] suggest records *can* [not do] qualify as public records if they contain information that refers to or impacts the actions, processes, and functions of government." *Nissen,* 183 Wn.2d at 880-81 (emphasis added). Following this sentence a footnote emphasizes that "[i]t is worth repeating that *records an employee maintains in a personal capacity* will not qualify as public records, even if they refer to, comment on, or mention the employee's public duties." *Id.* at 881, fn 8 (emphasis added). Thus, while the quoted language in *Nissen* provides that documents that "contain information that refers to or impacts the actions…of government" *may* be public records, *Nissen* holds that they must be within the scope of employment, and records maintained in a personal capacity, as the records were here, are not public records even if they reference public duties.

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[6] *Confederated Tribes v. Johnson,* 135 Wn.2d 734, 958 P.2d 260 (1998) (documents are public records where the government used and relied upon the information in them).

[7] *Oliver v. Harborview Med. Ctr.,* 94 Wn.2d 559, 618 P.2d 76 (1980) (patient medical records are public records only because they contain information *prepared and maintained by a public hospital* which could cause the public to learn about the public hospital's "administration of public health care services, facility availability, use and care, methods of diagnosis, analysis, treatment and costs, all of which are carried out or relate to the performance of a government or proprietary function")

Further, the documents at issue do *not*, for additional reasons, relate to the conduct of government or the performance of a governmental or proprietary function. The documents at issue involve a private nonprofit organization and faculty union organizing, where no union is certified to represent faculty at UW.[8] *See Dawson v. Daly*, 120 Wn.2d 782, 788, 845 P.2d 995 (1993) (verification of employment of deputy prosecutor, including his position, salary, and length of service, does not relate to the conduct of government or the performance of any governmental function and therefore is not a public record); *Smith v. Okanogan County*, 100 Wn.App. 7, 15, 994 P.2d 857 (2000) (oaths of attorneys on lists of attorneys a superior court could appoint (and possessed by the court) are not public records because they do not relate to the conduct of government or the performance of a governmental or proprietary function); *Forbes v. City of Gold Bar*, 171 Wn.App. 866, 288 P.2d 382 (2012), *rev. denied*,

[8] The Foundation's contention that the documents at issue are public records because "so much professor time" was being used to "promot[e] an outside organization" [Petition, 7] fails. First, the facts do not reflect the Foundation's assertions. In fact, many emails are duplicates and are email chains, and some were sent to or from Professor Wood's private email account, not on UW email. CP 952, 965, 971, 981. The fact that emails were sent during "regular work hours" is irrelevant to a professor's work schedule, which can be round the clock. Second, even if the facts did support the Foundation's assertion (which they do not), *Tiberino v. Spokane County* specifically held that over 450 personal emails sent on a work computer only became public records when they were relied upon by the government to terminate an employee for excessive email use, and were printed in preparation for litigation over that employee's termination. 103 Wn.App. at 685, 688 (2000). The *Tiberino* court did not hold that the personal emails were public records solely because they reflect a public employee's use of work email for some personal purposes. 103 Wn.App. at 688.

177 Wn.2d 1002 (2013) (emails of city council members on city email and city servers sorted by consultant as "not conduct of government" are not public records).

C. The Court Of Appeals' Decision Does Not Raise Any Issue of Substantial Public Interest.

In claiming that review should be accepted because there is a "substantial public interest," the Foundation seems to aver that this Court must accept review in every case in which lower courts enjoin release of records because "[t]he PRA is integral to Washington's focus on transparent governance." Petition, 5. It is not true that this Court accepts review of every PRA case in which disclosure is enjoined. *See, e.g., Forbes,* 171 Wn.App. 866; *West v. Evergreen State Coll. Bd. Of Trs.,* 3 Wn.App.2d 112, 414 P.3d 614 (2018) (enjoining release of material protected by the federal Family Educational Rights and Privacy Act), *rev. denied,* 191 Wn.2d 1005, 424 P.3d 1216 (2018); *West,* 196 Wn.App 627.

Further, RAP 13.4(b)(4) requires a *substantial* public interest, not merely a public interest. While the public certainly has an interest in the PRA, this case does not involve a *substantial* interest. And, public interest is diminished when a PRA request is for records maintained in a personal capacity. "The legislative intent of the PDA is to require public access to information concerning *the government's* conduct." *Dragonslayer,* 139

Wn.App at 445 (emphasis added); *see also Comaroto v. Pierce County Medical Examiner's,* 111 Wn.App. 69, 72, 43 P.3d 539 (2002).

The Foundation's additional argument that this case raises an issue of substantial public interest relies upon a mischaracterization of the Court of Appeals decision, averring that it "drastically changed the state of public records law in Washington." Petition, 5. The decision did no such thing. Instead, it followed this Court's decision in *Nissen* and applied the scope of employment test to the review of email, including personal and private emails, by a UW professor, treated by UW as the custodian of records, in response to a PRA request.

D. None of the Foundation's Other Arguments Support Review Under RAP 13.4(b).

The Foundation's petition for review contains additional arguments which do not support acceptance of review under RAP 13.4(b), as they also do not establish a conflict with established precedent or a substantial public interest. These are addressed in turn.

1. There is No Conflict With Established Precedent Related To The Trial Court's and Court of Appeals' Application of The Categorization of the Records at Issue.

The trial court's and Court of Appeals' analysis and application of the facts does not conflict with any established precedent. The declarations sorting the documents at issue into descriptive categories are precisely

what *Nissen* called for with respect to "the mechanics of searching for and obtaining public records stored by or in the control of an employee." 183 Wn.2d at 883. *Nissen* held that "an affidavit with facts sufficient to show the information is not a 'public record' under the PRA" can provide a basis for not disclosing non-public record material. *Id.* at 886-87. As set forth in the next section, the declarations are sufficient.[9]

Further, from the time the declarations were filed with the trial court to the Foundation's appeal to the Court of Appeals (about eight months) the Foundation never used any mechanism available to it – including but not limited to a motion for in camera review of all or select documents or a request for more detailed categorization – to further ascertain the content of the documents at issue. It is disingenuous at best to claim the trial court should have conducted such review. More importantly, the Foundation cannot now seek review on this basis. *See* Section IV.A.

2. Facts In the Record Show That The Documents at Issue Were Not Created Within the Scope of Employment And Are Not Related to the Conduct of Government.

[9]The Foundation incorrectly cites *Dragonslayer* to support its assertion that the categories used by the Union are not sufficiently descriptive. *Dragonslayer* found that a trial court's determination that records *were* public records did not contain enough information to support that the records related to the conduct of government or the performance of a proprietary function. 139 Wn.App. at 445. *Dragonslayer* does not hold that where categories are sufficiently descriptive, as here, to determine that a record is *not* a public record, the records must be released.

SEIU 925's declarations are sufficient to determine that the documents are not within the scope of employment and do not relate to the conduct of government or the performance of a governmental or proprietary function.

First, emails and documents about faculty organizing including emails containing opinions and strategy in regard to faculty organizing and direct communication with SEIU 925 regarding a not-currently-certified union, sent and received in a personal capacity as a union member, bear no relation to the conduct of government or the performance of a governmental or proprietary function. They are personal and private discussions, involving personal and private deliberations about whether to join a private organization. These emails do not relate to the current, unionization of UW faculty. Second, postings on the UW AAUP listserver and emails of Professor Wood in his private capacity as UW AAUP chapter president and unrelated to UW business also do not relate to the conduct of government. Similar to emails about union organizing, these emails relate to the affairs of a private non-profit organization. CP 100. The AAUP's private nature and identity distinct from UW is underscored by the fact that participation in the AAUP UW chapter listserver is not limited to UW faculty or employees and includes people outside of the UW community. CP 100. As to the other personal and private emails,

nothing provides that the date and time stamp of such emails constitutes a public record, as contended by the Foundation. *See, e.g.* fn 8.[10]

V. CONCLUSION

For the foregoing reasons, SEIU 925 respectfully requests that this Court deny the Foundation's petition for discretionary review.

RESPECTFULLY SUBMITTED this 26th day of October, 2018.

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[10]The Foundation raises two additional arguments, one regarding burden of proof and presumptions in favor of disclosure, and the other regarding whether UW should have determined the public record status of the documents. Neither support acceptance of discretionary review. As to the first, the Court of Appeals correctly acknowledged the broad construction of the definition of public record. *SEIU 925*, 4 Wn.App.2d at 618. Despite the Foundation's contentions, the PRA does not require ambiguities as to whether a document is a public record be resolved in favor of disclosure.

CERTIFICATE OF SERVICE

I, Kristen Kussmann, hereby declare under penalty of perjury under the laws of the State of Washington that on October 26, 2018, I am causing the foregoing to be filed with the Washington State Supreme Court, and a true and correct copy of the same to be sent via email and U.S. Mail on October 26, 2018 to the following:

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SIGNED this 26th day of October, 2018, at Seattle, WA.

/s/Kristen Kussmann
Kristen Kussmann

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October 26, 2018 - 2:59 PM

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