

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/30/2018 8:00 AM  
BY SUSAN L. CARLSON  
CLERK

IN THE SUPRME COURT OF THE STATE OF WASHINGTON

No. 96560-9

SEIU HEALTHCARE NW TRAINING  
PARTNERSHIP,

Respondent,

v.

EVERGREEN FREEDOM FOUNDATION,

Appellant.

**REPLY ISO MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW**

**AND CERTIFICATE OF SERVICE**

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

No. 76220-6-I

SEIU HEALTHCARE NW TRAINING  
PARTNERSHIP,

Respondent,

v.

EVERGREEN FREEDOM FOUNDATION,

Appellant.

**REPLY ISO MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW**

**AND CERTIFICATE OF SERVICE**

**I. FACTS RELEVANT TO REPLY**

The Order Denying the Motion for Reconsideration was served on the parties by email at 4:57 pm on October 29, 2018. The Petition for Review was electronically filed with the Division One Court of Appeals 30 days later on November 28, 2018, at 9:50 p.m., and electronically filed with the State Supreme Court that same day at 9:52 p.m. See emailed confirmations of both filings attached hereto as **Appendix A**.

**REPLY ISO MOTION FOR EXT.  
OF TIME TO FILE PET. FOR  
REVIEW- 1**

**ALLIED**  
LAW GROUP  
P.O. Box 33744  
Seattle, WA 98133  
(206) 801-7510

1 From noon to 5 p.m. on November 28, 2018, the e-filing portal for filings to the  
2 appellate courts was apparently undergoing maintenance and was obstructing parties from  
3 completing the e-filing of documents. A message on the portal's log in page instructed filers  
4 experiencing problems to contact the courts, which counsel in this matter did when she  
5 experienced problems uploading the original version of the motion for extension during this  
6 five-hour window. A voicemail message was left for the Supreme Court Clerk's Office which  
7 was not returned that day. Counsel spoke with a clerk for Division One who instructed her if  
8 the e-filing portal was not operating to arrange a messenger and have filings hand delivered—  
9 an option not possible due to the distance to the courthouse—and that fax filings were not  
10 allowed for a filing of the size of the Petition and its attachments.

11 Having wasted precious time trying to address the e-filing problems due to the  
12 apparent service maintenance by the courts that day, counsel was able to successfully upload  
13 her motion for extension, updated to reflect these newest facts, to the Division One Court of  
14 Appeals at 4:58 p.m. See **Appendix B** hereto. (Counsel had been instructed to submit her  
15 motion to Division One when she contacted the Division One Clerk with the explanation that  
16 it would be forwarded to the Supreme Court with the Petition when received.) A copy was  
17 also uploaded to the Supreme Court shortly thereafter in the abundance of caution.

18 Respondent was timely served with the Motion for Extension and thus put on notice—before  
19 5 p.m.—that a Petition for Review was being filed that same day.

## 20 **II. ARGUMENT**

21 Respondent cites a single case in support of its opposition to this Motion. Such case  
22 deals with a delay of **five years** to attempt to appeal, and a party offering no explanation for  
23 the reasons for an extension.

1 Here, Petitioner filed its Petition for Review within 30 calendar days of the Order  
2 denying reconsideration. RAP 13.4 does not state that a “day” requires filing before the  
3 physical court office closes, nor does it specify what is meant by a “day.” The Petition was  
4 filed less than five hours after the physical court office closed at Division One and the  
5 Supreme Court, but while the electronic e-filing portals for such courts was functional and  
6 accepting filings, and on a day when such filing portal had been down and experiencing  
7 difficulties accepting e-filings for a period of five hours from noon to 5 p.m.

8 The Federal Court electronic filing system similarly accepts filings 24 hours a day, as  
9 does the Washington Court portal.<sup>1</sup> The Federal Court system date and time stamps the  
10 documents with the actual date and time of filing. Washington’s system chooses to stamp  
11 anything filed after 5 p.m. on a court weekday as filed the following court weekday at 8 a.m.  
12 But the date and time stamp applied to the document does not alter its actual filing date and  
13 time in reality, which is recorded in the court’s system and reflected in the email  
14 confirmations.

15 Counsel in this matter filed her Petition for Review within 30 calendar days of the  
16 Order Denying Review. The filing should be deemed to be timely under RAP 13.4. For the  
17 reasons stated in the Motion, and this Reply, should the Court view the filing as untimely as it  
18 occurred after 5 p.m., extraordinary circumstances and grounds for an extension have more  
19 than been shown for such extension under RAP 18.8(b) for the four hours and fifty minutes  
20 after 5 p.m. by which the filing would have been deemed late.

21 While the Washington appellate courts have chosen to date stamp documents filed  
22 after 5 p.m. as if the documents had been filed the next business, nowhere in RAP 13.4, or

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23 <sup>1</sup> Counsel does not mean to suggest a portal being open 24 hours a day is a negative. Allowing filings 24 hours a  
24 day can prevent parties a server from being overburdened with filers all trying to file during the same hour or  
thirty minute window, as the federal courts have discovered.

1 other rules regarding the counting of time, do the rules indicate the 30<sup>th</sup> day under RAP 13.4  
2 ends at 5 p.m. Such an omission should preclude a court from reading such a deadline into  
3 the rule and making a filing deemed untimely. See, e.g., **People ex. rel Madigan v. Ill.**  
4 **Commerce Comm’n**, 899 N.E.2d 227, 232– 237 (Ill. 2008) (“[I]n the absence of a specific  
5 regulation, we cannot read a 5 p.m. deadline into the... rules.”).

6 As this Court stated in **Christensen v. Ellsworth**:

7 The ordinary meaning of “day” is a 24 hour period beginning at midnight.  
8 See WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 578 (2002)  
9 (defining “day” as a “CIVIL DAY [ ] *among most modern nations*: the mean solar  
10 day of 24 hours beginning at mean midnight”); *id.* at 316 (defining “calendar day”  
11 as “a civil day: the time from midnight to midnight”); see also 74 AM.JUR.2D  
12 **Time § 10 (2001)** (“[a] ‘day’ generally means a calendar day”). Using the ordinary  
13 meaning of day, weekends and holidays would be included in the calculation of  
14 the three day notice period.

15 **Christensen v. Ellsworth**, 162 Wash.2d 365, 373, 173 P.3d 228 (2007). The **Christiansen**  
16 Court was addressing the meaning of “day” for purposes of determining whether a litigant had  
17 waited the appropriate number of days before serving a document, but its reasoning is no less  
18 valid when applied to the circumstances here. RAP 13.4 uses the word “day” without any  
19 other definition, leaving it open to argument that its actual deadline should run until midnight  
20 of the calendar day, and not end at 5 p.m.

21 Again, as the Order denying review was served at 4:57 p.m. on October 29, 2018,  
22 three hours before the court physical office closed for the day, had it been served just four  
23 minutes later, the court would presumably have deemed it served the following day, making  
24 November 29, 2018 the due date 30 days later. So the extension sought here could be seen in  
reality as an extension of a mere four minutes four minutes—treating the order as if served  
after 5 p.m. on October 29, 2018—or an extension of just four hours and fifty minutes I part  
to account for the unavailability of e-filing for the last five hours of the court office workday.

1           RAP 1.2(c) allows this Court to “waive or alter the provisions of any of these rules in  
2 order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).” RAP  
3 18.8(b) allows for extensions for a Petition for Review in “extraordinary circumstances and to  
4 prevent a gross miscarriage of justice”. Counsel has explained, with candor the horrendous  
5 heartbreaking circumstances that led to the filing of the Petition four hours and fifty minutes  
6 after 5 p.m. yesterday. The movant has more than established extraordinary circumstances  
7 justifying that brief extension. The movant has further explained why denial of the motion  
8 would constitute a gross miscarriage of justice.


9           The Petition filed yesterday deals with a direct conflict and disagreement between  
10 two Divisions of the Courts of Appeals and a decision by Division One in this case that places  
11 it at odds with the majority of courts in this nation on a highly important issue of preemption  
12 and the Washington State Uniform Trade Secrets Act and the proper scope of a replevin  
13 claim. It is an important case that needs the guidance of the Washington State Supreme  
14 Court, and such a case may not reach such Court again for years to come if this opportunity is  
15 not taken. The Opinion which is the subject of the Petition is in conflict with every known  
16 published case, from every jurisdiction, on the issues addressed in the Petition, and nearly  
17 every known unpublished case throughout the country. It lays Washingtonians open to future  
18 opportunistic, unfair, hurried replevin actions, like the one Movant experienced below, for  
19 electronic copies of data on vague unproven allegations of ownership without the protections  
20 of normal discovery and expert analysis required to appropriately evaluate such claims. Such  
21 claims—for possession and use of copies of allegedly confidential and proprietary data—are  
22 meant to be addressed under the Uniform Trade Secrets Act, in a uniform manner through the  
23 country, and not in a summary proceeding just weeks after being sued that are designed to  
24

1 recover possession of a tangible, singular piece of property like a car, tractor or dog. The  
2 mischief that could be done with the Opinion if not evaluated cannot be underestimated. The  
3 public needs this Court to weigh in on the conflict the Opinion has created and clarify the  
4 appropriate law on these subjects in this State, and an alleged delay of filing of four hours and  
5 fifty minutes should not be allowed to prevent such clarification and guidance.

6 For the foregoing reasons, the Appellant/Movant asks the Court to grant its motion  
7 and accept the Petition filed yesterday at 9:50 p.m.

8 Respectfully submitted this 29th day of November, 2018.

9 ALLIED LAW GROUP, LLC  
10 Attorneys for Appellant Freedom Foundation

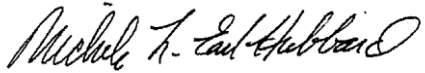
11 By   
12 Michele Earl-Hubbard, WSBA # 26454  
13 P.O. Box 33744, Seattle, WA 98133  
14 (206) 801-7510  
15 [michele@alliedlawgroup.com](mailto:michele@alliedlawgroup.com)

14 **CERTIFICATE OF SERVICE**

15 I certify under penalty of perjury under the laws of the State of Washington that on  
16 November 29, 2018, I delivered a copy of the foregoing Reply ISO Motion for Extension of  
17 Time to File Petition for Review and Certificate of Service by email pursuant to agreement to  
18 the following:

19 Richard E. Spoonemore (WSBA #21833) and Eleanor Hamburger (WSBA #26478)  
20 SIRIANNI YOUTZ SPOONEMORE HAMBURGER, 999 Third Avenue, Suite 3650  
21 Seattle, Washington 98104  
22 [r Spoonemore@sylaw.com](mailto:r Spoonemore@sylaw.com); [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)  
23 *Attorneys for Respondent*

24 Dated this 29th day of November, 2018.

  
Michele Earl-Hubbard

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/30/2018 10:42 AM  
BY SUSAN L. CARLSON  
CLERK

IN THE SUPRME COURT OF THE STATE OF WASHINGTON

SEIU HEALTHCARE NW TRAINING  
PARTNERSHIP,  
  
Respondent,  
  
v.  
  
EVERGREEN FREEDOM FOUNDATION,  
  
Appellant.

No. \_\_\_\_\_

**APPENDICES TO**  
**REPLY ISO MOTION FOR**  
**EXTENSION OF TIME TO FILE**  
**PETITION FOR REVIEW**  
  
**AND CERTIFICATE OF SERVICE**

IN THE COURT OF APPEALS  
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DIVISION I

SEIU HEALTHCARE NW TRAINING  
PARTNERSHIP,  
  
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EVERGREEN FREEDOM FOUNDATION,  
  
Appellant.

No. 76220-6-I

**APPENDICES TO**  
**REPLY ISO MOTION FOR**  
**EXTENSION OF TIME TO FILE**  
**PETITION FOR REVIEW**  
  
**AND CERTIFICATE OF SERVICE**

Appendices A and B to the Reply In Support of Motion for Extension of Time to File  
Petition for Review are attached hereto.

**APPENDICES TO REPLY ISO  
MOTION FOR EXT. OF TIME  
TO FILE PET. FOR REVIEW- 1**

**ALLIED**  
LAW GROUP  
P.O. Box 33744  
Seattle, WA 98133  
(206) 801-7510

# Appendix A



## **Michele Earl-Hubbard**

---

**From:** DoNotRespond@courts.wa.gov  
**Sent:** Wednesday, November 28, 2018 9:50 PM  
**To:** info@alliedlawgroup.com; Michele Earl-Hubbard  
**Subject:** Electronic Filing - Document Upload for Case 762206 - Confirmed  
**Attachments:** 20181128214853D1922032-trans\_ltr.pdf

**Case Number:** 76220-6

**Case Title:** Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner

**From:** Michele Earl-Hubbard

**Organization:** Allied Law Group LLC

The file(s) listed below were successfully sent to the Court of Appeals Court of Appeals Division I along with a transmittal letter.

Attached is a copy of the Transmittal Letter for your records.

The following is a list of file(s) that were uploaded:

- 2018-11-28 final Petition for Review to Supreme Court WO APPENDICES.pdf

**The uploaded file(s) were renamed, and can be viewed online by clicking on the link(s) below. Note: document(s) will be available online for 6 months.**

- [762206 Petition for Review 20181128214853D1922032 5801.pdf](#)

The file(s) and transmittal letter were also sent to:

ehamburger@sylaw.com

JAbernathy@FreedomFoundation.com

matt@sylaw.com

rspoonemore@sylaw.com

If you have any questions, please [contact Customer Support via the eService Center](#) and reference Filing Id 20181128214853D1922032.

## **Michele Earl-Hubbard**

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**From:** DoNotRespond@courts.wa.gov  
**Sent:** Wednesday, November 28, 2018 9:52 PM  
**To:** info@alliedlawgroup.com; Michele Earl-Hubbard  
**Subject:** Electronic Filing - Document Upload for Case PRV98442SC - Confirmed  
**Attachments:** 20181128215115SC370784-trans\_ltr.pdf

**Case Number:** Starting a New Appellate Court Case (PRV)

**Case Title:** Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner (762206)

**From:** Michele Earl-Hubbard

**Organization:** Allied Law Group LLC

The file(s) listed below were successfully sent to the Supreme Court along with a transmittal letter.

Attached is a copy of the Transmittal Letter for your records.

The following is a list of file(s) that were uploaded:

- 2018-11-28 final Petition for Review to Supreme Court WO APPENDICES.pdf

**The uploaded file(s) were renamed, and can be viewed online by clicking on the link(s) below. Note: document(s) will be available online for 6 months.**

- [PRV Petition for Review 20181128215115SC370784 7085.pdf](#)

The file(s) and transmittal letter were also sent to:

ehamburger@sylaw.com

JAbernathy@FreedomFoundation.com

matt@sylaw.com

rspoonemore@sylaw.com

If you have any questions, please [contact Customer Support via the eService Center](#) and reference Filing Id 20181128215115SC370784.

# Appendix B

## **Michele Earl-Hubbard**

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**From:** DoNotRespond@courts.wa.gov  
**Sent:** Wednesday, November 28, 2018 4:58 PM  
**To:** info@alliedlawgroup.com; Michele Earl-Hubbard  
**Subject:** Electronic Filing - Document Upload for Case 762206 - Confirmed  
**Attachments:** 20181128143206D1420197-trans\_ltr.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Case Number:** 76220-6

**Case Title:** Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner

**From:** Michele Earl-Hubbard

**Organization:** Allied Law Group LLC

The file(s) listed below were successfully sent to the Court of Appeals Court of Appeals Division I along with a transmittal letter.

Attached is a copy of the Transmittal Letter for your records.

The following is a list of file(s) that were uploaded:

- 2018-11-28 Motion for Extension of Time to File Petition for Review.pdf

**The uploaded file(s) were renamed, and can be viewed online by clicking on the link(s) below. Note: document(s) will be available online for 6 months.**

- [762206 Motion 20181128143206D1420197 0603.pdf](#)

The file(s) and transmittal letter were also sent to:

ehamburger@sylaw.com

JAbernathy@FreedomFoundation.com

matt@sylaw.com

rspoonemore@sylaw.com

If you have any questions, please [contact Customer Support via the eService Center](#) and reference Filing Id 20181128143206D1420197.

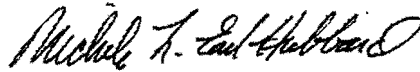
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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on November 30, 2018, I delivered a copy of the foregoing Appendices to the Reply ISO Motion for Extension of Time to File Petition for Review and Certificate of Service by email pursuant to agreement to the following:

Richard E. Spoonemore (WSBA #21833) and Eleanor Hamburger (WSBA #26478)  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER, 999 Third Avenue, Suite 3650  
Seattle, Washington 98104  
rspoonemore@sylaw.com; ehamburger@sylaw.com  
*Attorneys for Respondent*

Dated this 30th day of November, 2018.



---

Michele Earl-Hubbard

**ALLIED LAW GROUP LLC**

**November 30, 2018 - 10:42 AM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner (762206)

**The following documents have been uploaded:**

- PRV\_Petition\_for\_Review\_Plus\_20181130104123SC818949\_6609.pdf

This File Contains:

Other - Appendices to Reply ISO Mtn for Extension  
Petition for Review

*The Original File Name was 2018-11-29 Appendix to Reply re Mot for Extension of Time to File Pet for Rev.pdf*

**A copy of the uploaded files will be sent to:**

- JAbernathy@FreedomFoundation.com
- ehamburger@sylaw.com
- matt@sylaw.com
- rspoonemore@sylaw.com

**Comments:**

The attached filing is the Appendices to the Reply in Support of the Motion for Extension of Time to file Petition for Review. The Reply was filed on 11/29/18 without the appendices. The Petition for Review was filed on 11/28/18.

---

Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com

Address:

PO BOX 33744

SEATTLE, WA, 98133-0744

Phone: 206-443-0200

**Note: The Filing Id is 20181130104123SC818949**

**ALLIED LAW GROUP LLC**

**November 29, 2018 - 5:02 PM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner (762206)

**The following documents have been uploaded:**

- PRV\_Petition\_for\_Review\_Plus\_20181129170056SC178420\_5860.pdf

This File Contains:

Other - Reply ISO Motion for Extension  
Petition for Review

*The Original File Name was 2018-11-29 Reply re Motion for Extension of Time to File Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- JAbernathy@FreedomFoundation.com
- ehamburger@sylaw.com
- matt@sylaw.com
- r Spoonemore@sylaw.com

**Comments:**

The attached is the Reply in support of the Motion for Extension to file the Petition for Review. The Petition was filed on 11/28/19.

---

Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com

Address:

PO BOX 33744

SEATTLE, WA, 98133-0744

Phone: 206-443-0200

**Note: The Filing Id is 20181129170056SC178420**