NO. 98349-6

SUPREME COURT OF THE STATE OF WASHINGTON

DONALD SLOMA,

Petitioner,

v.

STATE OF WASHINGTON,
DEPARTMENT OF RETIREMENT SYSTEMS,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals applied a straightforward statutory analysis to conclude that, under RCW 41.40.191, Petitioner Donald Sloma's irrevocable election into the Post 30-Year Program (Program) precludes the Department of Retirement Systems (Department) from recalculating his retirement benefits. Mr. Sloma's Petition for Review fails to identify or argue any basis for accepting review of this opinion, as required by RAP 13.4. Under the standards in RAP 13.4(b), the Court of Appeals' opinion does not warrant this Court's review.

The Program is an optional benefit for Public Employees Retirement System (PERS) Plan 1 (PERS 1) members who earned 30 years of service credits, allowing them to receive a refund of retirement contributions made after electing into the Program. In return, their retirement benefit would be calculated using only compensation earned "prior to the effective date of the member's election." RCW 41.40.191(2). Mr. Sloma elected into the Program, retired, and received his contributions refund. He later returned to PERS employment and retired again, his "second" retirement. He argues that RCW 41.40.191(2)'s prohibition on recalculating retirement benefits after election into the Program does not apply to "second" retirements.

The Court of Appeals correctly rejected Mr. Sloma's arguments in support of recalculation under the plain language of relevant statutes and existing precedent. The Court also applied longstanding precedent to reject his estoppel and constitutional impairment of contract claims. The Court's decision does not meet any of the requirements for review under RAP 13.4(b). It does not conflict with any decision of this Court or the other divisions, raise a substantial question of constitutional law, or address an issue of substantial public interest as it affects only a small number of PERS 1 members. Mr. Sloma does not argue otherwise.

This Court should, therefore, deny review.

II. COUNTERSTATEMENT OF ISSUES

The issues in this case are:

(1) Whether RCW 41.40.191 precludes the Department from calculating a Program member's retirement benefits to include compensation earned after the member enrolled into the Program when the member retired from PERS membership but later unretired to return to membership;

(2) Whether Mr. Sloma is barred from raising equitable estoppel as a cause of action;

(3) Whether Mr. Sloma failed to meet the elements of promissory estoppel; and

(4) Whether the Program, or the Department's application of the Program, is constitutional.

III. COUNTERSTATEMENT OF THE CASE

A. Statutory Background

PERS 1 is a defined benefit retirement plan available to eligible public employees who joined the PERS before October 1977. RCW 41.40.010(27). PERS 1 members may retire with a benefit calculated based on the following statutory formula: two percent x service credit amount x average final compensation (AFC). RCW 41.40.185. AFC is the "average of the greatest compensation earnable by a member during any consecutive two year period." RCW 41.40.010(6)(a).

Under PERS 1, benefits may not exceed 60 percent of the member's AFC. RCW 41.40.185(3). If a member renders service for 30 years or more, the member's retirement benefit is exactly 60 percent of the member's AFC—although AFC can still increase after 30 years.

To pay for PERS 1 benefits, the member's employer and the member contribute a percentage of the member's compensation during the member's employment. The member contributes a fixed six percent, and

both the members and employers contribute even after the member has accrued 30 years of service. RCW 41.40.330; RCW 41.45.060.[1]

In 1999, the Legislature enacted RCW 41.40.191, which offered PERS 1 members who reached 30 years of PERS service the option to receive a refund of their post-30 year contributions. Laws of 1999, ch. 362, § 2. No later than six months after attaining 30 years of service, PERS 1 members were required to choose whether to receive their eventual retirement under the new option or under the statute as it previously existed (hereinafter, the "old option"). *Id.*

B. Mr. Sloma's Election into the Program

On January 15, 2004, in anticipation of reaching 30 years of service on January 31, Mr. Sloma enrolled in the Program by completing a Notice of Election form for the Post 30-Year Program. AR 0208. By signing the form, Mr. Sloma indicated that he understood that his AFC "will be based on earnings prior to DRS receiving this election." *Id.* Mr. Sloma's election became effective February 1, 2004. AR 0222.

Mr. Sloma then retired from the State Board of Health, effective March 1, 2004. AR 0222, 0231. Based on his earnings prior to electing in

[1] Employee and employer contributions are deposited into the PERS Plan 1 trust fund and invested by the Washington State Investment Board to fund future benefits. RCW 41.50.075, .080. If a member separates from service and elects to retire from PERS Plan 1, the member will receive the monthly benefit described above, paid from the PERS Plan 1 trust.

the Program, his AFC was $6,492.80 per month. AR 0222. Consistent with his election into the Program, Mr. Sloma received a refund of his post-30 employee contributions of $920.60, less federal withholding of $184.12 (i.e., $736.48), when he retired in 2004. AR 0224.

C. Mr. Sloma's Career After He Enrolled into the Program

After retiring from the Board of Health, Mr. Sloma worked for non-profit organizations from 2004 to 2012. AR 0231, 0233. In 2011, Mr. Sloma learned about an opening for the position of Director of Thurston County Department of Public Health. AR 0214. In December 2011, he contacted the Department for information on his prior PERS employment. AR 0241-42. On December 16, 2011, the Department sent him a letter confirming that his PERS benefit was a "lifetime benefit," and on January 26, 2012, Katie Johnson (now Katie Sparkles) sent him an email showing his PERS employment history. AR 0249, 0251. Mr. Sloma does not recall discussing his enrollment in the Program with the Department at this time, nor does anyone at the Department recall talking to Mr. Sloma about the Program at this time. AR 0246-47. Neither the Department nor Mr. Sloma has records of any other communication in December 2011 or January 2012. AR 0269.

Mr. Sloma applied to be the Director of Thurston County Department of Public Health on January 31, 2012. AR 0226. Thurston

County hired him on April 12, 2012. AR 0253, 0255. Mr. Sloma began full-time employment on May 1, 2012. AR 0240, 0253.

On May 2, 2012, the day after Mr. Sloma began employment, he telephoned the Department and spoke with Ms. Sparkles about how his return to work would affect his PERS 1 retirement. He again did not mention that he had enrolled in the Program in 2004. AR 0269-70. As Ms. Sparkles understood his question, Mr. Sloma was only asking whether he would have to remain employed with the County for a minimum amount of time before his PERS benefit could be recalculated using his compensation from the County to derive his AFC.[2] AR 0269-70.

Ms. Sparkles, after consultation with her supervisor, sent Mr. Sloma an email containing excerpts from RCW 41.40.037, WAC 415-108-710, and the DRS publication, "PERS Plan 1 Thinking About Working After Retirement." AR 0257-58. Based on the information Mr. Sloma had provided on the phone and her understanding of his question, Ms. Sparkles—unaware that Mr. Sloma had enrolled in the Program—summarized the general information in the sources as follows:

[2] Describing this contact with Ms. Sparkles, Mr. Sloma wrote, "Katie Johnson . . . took an interest in my questions and was willing to do the research to follow up, get clear and specific answers to my questions and document her responses. I don't recall her mentioning the post 30 year plan or asking me about it. . . . I kept asking Katie about whether there was any period of time I would have to work in order to be able to rebase my pension." AR 0216-17.

> Summary; after returning to active membership it doesn't matter how long you work and then re-retire to have the new compensation and service credits counted towards recalculating your new AFC for re-retirement.

AR 0257. On May 4, 2012, Mr. Sloma notified the Department that he had chosen to suspend his retirement and re-enroll in PERS 1. AR 0260. The Department re-enrolled him in PERS 1, effective May 1, 2012, and suspended his monthly retirement allowance. AR 0263. Mr. Sloma and the County began to make PERS 1 employee and employer retirement contributions respectively.

On July 9, 2015, Mr. Sloma contacted the Department, indicating he wanted to retire from Thurston County effective October 1, 2015. AR 0263. The Department sent him a benefit estimate and, taking into account his participation in the Program, calculated his AFC and corresponding benefit based on his salary prior to his 2004 election into the Program. The Department did not consider compensation from the County between 2012 and 2015. AR 0262-64. Mr. Sloma requested further review. On October 9, 2015, the Department confirmed that it could not recalculate his AFC with compensation from Thurston County. AR 0266-67.[3]

[3] The Department and Mr. Sloma agreed that, if Mr. Sloma does not prevail in this case, the Department would allow Mr. Sloma to undo his reelection into PERS in 2012. The Department would consider him a retiree returning to work under RCW 41.40.037(2). AR 0011. The Department would then refund Mr. Sloma's

D. Procedural History

Mr. Sloma petitioned the Department to reverse its decision. The Department upheld the decision not to recalculate Mr. Sloma's AFC with compensation from Thurston County. AR 0421-24.

Mr. Sloma appealed the denial through an administrative hearing process at the Department, claiming that the Program, under RCW 41.40.191, does not apply to a member who retired, returned to PERS membership, and then retired again. In other words, he argued that the Program does not apply to "second" retirements. Mr. Sloma also included an estoppel claim. He lost.

Mr. Sloma petitioned for judicial review to the Thurston County Superior Court raising the same arguments and adding a new argument that the Program, as applied to him, is an unconstitutional impairment of contract. The superior court disagreed and affirmed the administrative decision. Mr. Sloma appealed the superior court's decision to the Court of Appeals, Division II.

The Court of Appeals likewise affirmed the administrative decision, determining that the plain language of RCW 41.40.191 prevents the Department from including his compensation from Thurston County in

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contributions made while he worked at Thurston County. *Id.* The Department would also pay Mr. Sloma his retirement benefits for that period, reduced by the return to work limit under RCW 41.40.037(2). *Id.*

his AFC. The Court also rejected Mr. Sloma's estoppel and constitutional claims. *Sloma v. Dep't of Ret. Sys.*, __ Wn. App. __, 459 P.3d 396, 402 (2020). Mr. Sloma petitioned for this Court's review.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

Under RAP 13.4(b), this Court will only grant review if the Court of Appeals decision conflicts with a Supreme Court decision or a published Court of Appeals decision, involves a significant question of constitutional law, or raises an issue of substantial public interest that should be determined by the Supreme Court. Mr. Sloma's Petition fails to argue that this case meets any of these requirements.

The Court of Appeals here engaged in a careful review of the relevant retirement statutes and applied their plain language. Mr. Sloma attempts to read into these statutes an exception, for "second" retirements, that is not supported by the statutory language or any case law.

The Court of Appeals also correctly rejected Mr. Sloma's equitable estoppel claim, as a party cannot raise equitable estoppel as a cause of action. In addition, the Court correctly rejected Mr. Sloma's promissory estoppel claim for failing to meet the necessary elements. As for his constitutional claim, the Court correctly held that, because the Program provided PERS 1 members with an option, it is not an impairment of

contract. These holdings are based on longstanding precedent, and Mr. Sloma fails to cite any conflicting decision.

Additionally, Mr. Sloma does not contend that this case "involves an issue of substantial public interest." RAP 13.4(b)(4). Indeed, this case only affects a small number of PERS 1 members, those who enrolled in the Program, retired, and then returned to a PERS-eligible position.

A. The Court of Appeals' Interpretation of the Relevant Statutes Does Not Conflict with Any Decision by this Court or the Other Divisions

Mr. Sloma fails to show that the Court of Appeals' interpretation of the relevant statutes conflicts with any existing precedent or rule of statutory interpretation to warrant review under RAP 13.4. When interpreting a statute, the objective is to ascertain and give effect to the Legislature's intent. *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 405, 377 P.3d 199 (2016). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Darkenwald v. Emp't Sec. Dep't*, 183 Wn.2d 237, 244, 350 P.3d 647 (2015) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). Here, the Court of Appeals followed these established rules in holding that the plain meaning of the statute governing the Program, RCW 41.40.191, is unambiguous in

barring the Department from calculating Mr. Sloma's AFC to include compensation from Thurston County.

RCW 41.40.191 states that "[a PERS 1] member may make the irrevocable election under this section no later than six months after attaining thirty years of service." RCW 41.40.191(2) then states that "[u]pon retirement, the member's benefit shall be calculated using only the compensation earnable credited prior to the effective date of the member's election."

Mr. Sloma elected into the Program in 2004. He later retired the same year and the Department refunded his post-30 contributions. The Department then calculated his AFC to include only the compensation he earned before he elected into the Program.

Mr. Sloma argues that this restriction does not apply to his retirement from Thurston County, his "second" retirement. But instead of citing any cases that conflict with the Court of Appeals' statutory analysis, Mr. Sloma argues that an ambiguity exists because statutes governing retired PERS 1 members who return to PERS employment and then retired (RCW 41.40.023, RCW 41.40.037(3), and RCW 41.40.010(6)(a)) do not address the Program. As the Court of Appeals' analysis is consistent with precedent from this Court and the other divisions, this argument is not a basis for granting review.

Mr. Sloma's ambiguity argument fails as a matter of law as well. Courts should read statutes as complementary, rather than in conflict with each other." *Waste Mgmt. of Seattle, Inc. v. Util. & Transp. Comm'n*, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994). RCW 41.40.023, RCW 41.40.037(3), RCW 41.40.010(6)(a), and RCW 41.40.191 are complementary, addressing distinct aspects in the sequence of retiring and subsequently returning to membership.

RCW 41.40.023 governs eligibility for PERS membership. RCW 41.40.023(12) allows a retired PERS member to re-establish membership if the member returns to a PERS eligible position. RCW 41.40.037(3) then governs how membership benefits are calculated for a PERS 1 member that has re-established membership. The Court of Appeals was, therefore, correct in holding that these statutes do not conflict with RCW 41.40.191, which governs PERS 1 members who elected into the Program. They do not require harmonization, and simply govern different subject matters.

Mr. Sloma's argument that the Department regulation on benefit calculation for PERS members' second retirements, WAC 415-108-710(6)(b), creates an ambiguity by not mentioning the Program, also fails. Pet. Review at 10. The argument is not based on any existing precedent or established rule of statutory interpretation, and thus no conflict exists. The

Court of Appeals correctly rejected it because "if statutory language is plain on its face, as it is here, we [courts] will not reach or consider agency interpretation of the statute." *Sloma*, 459 P.3d at 404 (citing *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 715-16, 153 P.3d 846 (2007)). "If anything, the silence of agency rules on RCW 41.40.191's application suggests that the legislature's intent in RCW 41.40.191 is clear on its face." *Id.* Therefore, the Court of Appeals' interpretation of the relevant statutes is consistent with precedent of this Court and the other divisions.

B. The Court of Appeals Rejected Mr. Sloma's Equitable Estoppel Claim Under the Principle, Employed by this Court and the Other Divisions, that Such Claim is Not Available as a "Sword, or Cause of Action"

Mr. Sloma fails to show that the Court of Appeals' ruling on his estoppel claim conflicts with any decision by this Court or the other divisions as to warrant review under RAP 13.4. Instead, he conflates equitable with promissory estoppel by arguing that the two are essentially the same claim. Pet. Review at 18. While these claims are related, each has different requirements. *See Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 259, 616 P.2d 644 (1980).

This Court has long held that equitable estoppel is "available only as a 'shield' or defense, while promissory estoppel can be used as a 'sword' in a cause of action for damages." *Id.* All three divisions of the

Court of Appeals have applied this principle on equitable estoppel to cases in which a party invokes equitable estoppel against the government. *See McCormick v. Lake Wash. Sch. Dist.*, 99 Wn. App. 107, 992 P.2d 511 (1999) (Division I); *Motley-Motley, Inc. v. Pollution Control Hearings Bd.*, 127 Wn. App. 62, 110 P.3d 812 (2005) (Division III).

Here, the Court of Appeals followed its recent decision in rejecting Mr. Sloma's equitable estoppel claim. *Sloma*, 459 P.3d at 406 (citing *Byrd v. Pierce Cty.*, 5 Wn. App. 2d 249, 257-58, 425 P.3d 948, 952 (2018)). The Court explained, Mr. Sloma "misplaces his reliance on the equitable estoppel doctrine by attempting to use it as a sword to compel DRS to recalculate his AFC based on the compensation he earned after he made his irrevocable election under RCW 41.40.191." *Sloma*, 459 P.3d at 406.

Mr. Sloma does not dispute that he invoked estoppel as a "sword, or cause of action," and not as a defense. Instead, he contends that a party may generally invoke estoppel, not specifying whether it is equitable or promissory, against the Department. Pet. Review at 16 (citing *Hitchcock v. Dep't of Ret. Sys.*, 39 Wn. App. 67, 73, 692 P.2d 834 (1984)). *Hitchcock* does not conflict with the Court of Appeals' decision in this case. In *Hitchcock*, the Court of Appeals (Division III) applied equitable estoppel to require that the Department count fringe benefits as compensation earnable, because counting such benefits as compensation earnable was

not "contrary to the retirement statute."[4] *Hitchcock*, 39 Wn. App. at 73. Like the Court of Appeals here, the *Hitchcock* opinion explicitly recognized that a party may not invoke equitable estoppel to obtain a benefit contrary to statute. *Id.* But in that case, the Court found that the Legislature had intended for fringe benefits to count as compensation earnable. *Id.* at 73-74 ("[i]t is true estoppel will not be applied to frustrate the clear purpose of state laws").

This case is different because the Court of Appeals held that the Department cannot, under the statute, calculate Mr. Sloma's AFC to include compensation from Thurston County. Therefore, Mr. Sloma cannot invoke equitable estoppel to force the Department to do so. The Court of Appeals' conclusion to that effect does not create a conflict.

C. The Court of Appeals Rejected Mr. Sloma's Promissory Estoppel Claim Under the Established Principle, Employed by this Court and the Other Divisions, That Such Claim Requires a Clear and Definite Promise

Mr. Sloma also fails to show how the Court of Appeals' application of promissory estoppel conflicts with a decision by this Court or the other divisions. *Sloma*, 459 P.3d at 406. Chiefly, the Court rejected

[4] While the majority opinion in *Hitchcock* did not state that it was addressing equitable estoppel, the dissenting opinion states that the issue before the Court was equitable, not promissory, estoppel. *Hitchcock*, 39 Wn. App. at 78.

his promissory estoppel claim for not meeting the requirement of having "a clear and definite promise." *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 173, 876 P.2d 435 (1994); *see also e.g. Wash. Educ. Ass'n v. Dep't of Ret. Sys.*, 181 Wn.2d 212, 225, 332 P.3d 428 (2014).

Mr. Sloma does not assert that anyone from the Department made a "clear and definite" promise to calculate his AFC to include compensation from Thurston County. He does not cite a case, and none exists, that applied promissory estoppel without this threshold requirement. Pet. Review at 9-11. This alone warrants rejection of Mr. Sloma's promissory estoppel claim.

Further, Mr. Sloma's promissory estoppel claim "fails because he cannot show that he changed his position in reliance" on a promise made by the Department.[5] *Sloma*, 459 P.3d at 406-07. Equitable estoppel has the same reliance requirement.[6] The Court of Appeals found that he could not have relied upon the promise because "[t]he e-mails Sloma relies on

[5] The requirements to establish promissory estoppel are: "(1) [a] promise which (2) the promisor should reasonably expect to cause the promisee to change his position and (3) which does cause the promisee to change his position (4) justifiably relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of the promise." *Wash. Educ. Ass'n*, 181 Wn.2d at 225.

[6] To establish equitable estoppel, a party must prove by "clear, cogent, and convincing evidence" that: "(1) a statement, admission, or act by the party to be estopped, which is inconsistent with its later claims, (2) the asserting party acted in reliance upon the statement or action, (3) injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action, (4) estoppel is 'necessary to prevent a manifest injustice,' and (5) estoppel will not impair governmental functions." *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 887, 154 P.3d 891 (2007).

occurred on May 4 and 8. But his appointment to the Thurston County position was confirmed on April 12, and his first day of work was May 1." *Sloma*, 459 P.3d at 407. Here, Mr. Sloma fails to address the timing issue of his estoppel claim, only stating that his reliance was "reasonable, since he spoke to the person at DRS who was trained and assigned to answer the type of question he asked." Pet. Review at 18. However, there is no precedent for allowing a party to establish reliance when the party could not have relied. Promissory estoppel clearly requires that the promise that serves as the basis of the estoppel claim actually "cause[s] the promisee to change his position." *Wash. Educ. Ass'n*, 181 Wn.2d at 225.

Therefore, the Courts of Appeals' holding that Mr. Sloma cannot establish equitable or promissory estoppel is consistent with existing precedent by this Court and the other divisions.[7]

D. The Court of Appeals' Ruling on the Impaired Contract Claim Does Not Raise a Substantial Constitutional Question Because It Follows Settled Law

Mr. Sloma's only constitutional issue presented for review under RAP 13.4(b)(3), the application of *Bakenhus v. City of Seattle*, 48 Wn.2d 695, 296 P.2d 536 (1956), also fails. Pet. Review at 11-16. This issue does not raise "a significant question of law under the Constitution of the State

[7] The Court of Appeals did not address every promissory and equitable estoppel element that Mr. Sloma failed to establish. The Department's brief shows that Mr. Sloma would also fail to establish the other elements as well. Br. Resp't at 23-34.

of Washington" warranting review under RAP 13.4(b)(3) because the Court of Appeals correctly applied *Bakenhus* and its progeny.

Bakenhus set forth the principle that public pension plans form contractual obligations between the State and the plans' members. *Bakenhus*, 48 Wn.2d at 699. Article I, section 23 of the Washington Constitution prevents the State from impairing these obligations. The test to determine whether there was an unconstitutional impairment is: (1) whether a contractual relationship exists, (2) whether the legislation substantially impairs the contractual relationship, and (3) if there is substantial impairment, whether the impairment is reasonable and necessary to serve a legitimate public purpose. *Sloma*, 459 P.3d at 405 (citing *Lenander*, 186 Wn.2d at 414).

The Court of Appeals correctly applied this test to hold that the Program, as applied to Mr. Sloma, was not an impairment (the second part of the test) because the Program provided Mr. Sloma with an option. *Sloma*, 459 P.3d at 405 (finding that "RCW 41.40.191 does not require members to elect into the program; nor does it prevent members from reentering PERS membership after retirement"). Mr. Sloma took that option; he took advantage of both its benefit, a refund of post-30 contributions, and agreed to accept the detriment, having his AFC calculated based only on compensation earned before he elected into the

Program. Thus, as the Court put it, it was not RCW 41.40.191 that lead to his receiving a lower benefit, it was his decision to elect into the Program. *Id.* (holding "Sloma's decision to elect into the post-30-year program ultimately resulted in a lower retirement benefit than if he had not elected does not render RCW 41.40.191 unconstitutional").

Mr. Sloma's argument that the Program unconstitutionally forced him to waive his pension right to re-retire using a higher AFC lacks merit. There is no evidence in the record suggesting any coercion with respect to his election. That he may not have foreseen the full ramification of his decision to enroll into the Program at the time does not render it coerced or establish an unconstitutional impairment of contract.

He also argues that the detriments to him from enrolling into the Program far outweigh the benefits, Pet. Review at 13-14, but this argument fails because the Program provided an optional benefit. No decision by this Court or the other divisions suggests that the State Constitution protects public pension plan members from making the wrong decision. The Program allowed Mr. Sloma to make a rational calculation. At the time, near the end of his career, he logically thought that he would gain more from the contributions refund than from having his AFC calculated using post-30 compensation. Thus, by electing into the Program, Mr. Sloma did not waive a pension right. The Program gave him

the option to receive a contributions refund in exchange for fixing his AFC. The State Constitution does not protect him from failing to contemplate the full ramification of this decision, or from failing to predict he would earn more from not exercising this right.

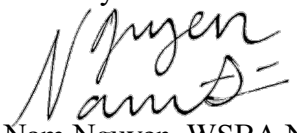
Therefore, there is no significant question of law under the State Constitution on whether the Program, as applied to Mr. Sloma, is an unconstitutional impairment of contract. The Court should reject Mr. Sloma's Petition for Review on this basis as well.

V. CONCLUSION

Mr. Sloma fails to demonstrate that this case warrants review under RAP 13.4(b). The Department did not err in concluding that RCW 41.40.191 prevents it from recalculating his AFC. There is no conflict, issue of substantial public importance, or constitutional basis to grant Mr. Sloma's Petition, and thus this Court should deny review.

RESPECTFULLY SUBMITTED this 29th day of April, 2020.

ROBERT W. FERGUSON
Attorney General



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PROOF OF SERVICE

I certify that on April 29, 2020, I caused to be electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal, through my legal assistant, which will send notification of such filing to all counsel of record at the following:

Wayne L. Williams, wayne@wwolaw.net

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

DATED this 29th day of April, 2020, at Tumwater, WA.

s/ Nam Nguyen
Nam Nguyen, Assistant Attorney General

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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