RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Nov 04, 2015, 1:01 pm
BY RONALD R. CARPENTER
CLERK

No. 91715-9

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 925,
Appellant/Cross-Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,
Respondent,

and

FREEDOM FOUNDATION,
Respondent/Cross-Appellant.

OPENING BRIEF OF CROSS-APPELLANT/RESPONDENT FREEDOM FOUNDATION

Attorneys for Cross-Appellant/Respondent Freedom Foundation

DAVID M. S. DEWHIRST, WSBA #48229
JAMES G. ABERNATHY, WSBA #48801
FREEDOM FOUNDATION
P.O. Box 552, Olympia, WA 98507
Phone (360) 956-3482, Fax (360) 352-1874
DDewhirst@myfreedomfoundation.com
JAbernathy@myfreedomfoundation.com

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

Table of Contents

I. INTRODUCTION 1

II. CROSS-APPELLANT'S ASSIGNMENTS OF ERROR 2

III. STATEMENT OF THE CASE 3

IV. ARGUMENT 5

A. THE TRIAL COURT ERRED BY FINDING SEIU HAD STANDING TO SEEK AN INJUNCTION UNDER EXEMPTIONS IN RCW 42.56.230 AND THE COMMERCIAL PURPOSE PROHIBITION IN RCW 42.56.070(9). 5

1. The trial court erred by relying upon the Division II Ameriquest case to conclude SEIU had standing because that holding was neither applying nor interpreting RCW 42.56.540 8

2. Alternatively, the trial court erred by concluding SEIU had standing to represent the interests of children and welfare recipients. 10

a. Children and welfare recipients are neither SEIU members nor bargaining unit members 11

b. Children and welfare recipients would not have standing to seek to enjoin these records 11

c. The interests SEIU seeks to protect by asserting PRA exemptions in RCW 42.56.230 are not germane to SEIU's purpose. 13

3. The trial court erred by granting standing to SEIU to seek an injunction under RCW 42.56.070(9). 14

B. THE TRIAL COURT ERRED BY ISSUING A TRO WHEN SEIU FAILED TO MEET THE LEGAL STANDARD FOR OBTAINING A TRO 16

C. THE TRIAL COURT CORRECTLY DENIED AN INJUNCTION BASED ON RCW 42.56.070(9). 19

1. Attorney General Opinions support a narrow—not expansive—definition for commercial purposes. 21

2. Federal case law interpreting the Freedom of Information and Lanham Acts do not support an expansive definition of commercial purposes in RCW 42.56.070(9) 24

a. SEIU's cited FOIA cases do not support an expansive definition of commercial purposes. 24

b. SEIU's cited Lanham Act cases do not support an expansive definition of commercial purposes. 26
3. SEIU's distinction between "prohibition" and "exemption" is irrelevant. 28
4. Alternatively, SEIU did not satisfy the requirements of RCW 42.56.540 29
5. Alternatively, RCW 42.56.210(2) mandates disclosure. 30
D. THE TRIAL COURT CORRECTLY DENIED INJUNCTIVE RELIEF ON THE BASIS THAT THE RECORDS ARE EXEMPT UNDER RCW 42.56.230 31
1. The requested records do not constitute the "personal information" of children or welfare recipients 32
2. SEIU's argument constitutes the oft-rejected connect-the-dots argument. 35
3. RCW 42.56.210(2) mandates disclosure. 38
E. THE TRIAL COURT CORRECTLY DENIED SEIU'S REQUEST FOR INJUNCTIVE RELIEF ON THE BASIS OF ARTICLE I, SECTION 7 OF THE CONSTITUTION 39
F. FREEDOM FOUNDATION IS ENTITLED TO ATTORNEYS' FEES AND COSTS 46
V. CONCLUSION **47**

TABLE OF AUTHORITIES

Cases

Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington,
177 Wn.2d 467, 300 P.3d 799 (2013).....passim

Ameriquest Mortgage Co. v. State Atty. Gen. ("Division II Ameriquest"),
148 Wn. App. 145, 199 P.3d 468 (2009) aff'd on other grounds sub nom.
Ameriquest, 170 Wn.2d 418, 241 P.3d 1245 (2010).....passim

Ames v. City of Fircrest, 71 Wn. App. 284, 857 P.2d 1083 (1993).....6, 19

Amren v. City of Kalama, 131 Wn.2d 25, 929 P.2d 389 (1997).....43

Bainbridge Island Police Guild v. City of Puyallup,
172 Wn.2d 398, 259 P.3d 190 (2011).....32, 33

Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405,
164 Wn.2d 199, 189 P.3d 139 (2008).....33

Brach Van Houten Holding, Inc. v. Save Brach's Coal. for Chicago,
856 F. Supp. 472 (N.D. Ill. 1994.....27

Dawson v. Daly, 120 Wn.2d 782, 845 P.2d 995 (1993)..... ... .39

Des Moines Marina Ass'n v. City of Des Moines,
124 Wn. App. 282, 100 P.3d 310 (2004).....11

Confederated Tribes of the Chehalis Reservation v. Johnson,
135 Wn.2d 734, 958 P.2d 260 (1998).... 47

Five Corners Family Farmers v. State,
173 Wn.2d 296, 268 P.3d 892 (2011..... 22

Ino Ino, Inc. v. City of Bellevue,
132 Wn.2d 103, 937 P.2d 154, amended, 943 P.2d 1358 (1997).....40, 42

Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports,
146 Wn.2d 207, 45 P.3d 186, amended on denial of reconsideration, 50
P.3d 618 (Wn. 2002).....11, 12, 13

Hearst v. Hoppe, 90 Wn.2d 123, 580 P.3d 246 (1978).....24

Jews for Jesus v. Brodsky, 993 F. Supp. 282 (D.N.J 1978).....27

King County v. Sheehan,
114 Wn. App. 325, 57 P.3d 307 (2002)..... .....37, 38, 41

Knight v. City of Yelm, 173 Wn.2d 325, 267 P.3d 973 (2011).....5

Koenig v. City of Des Moines,
158 Wn.2d 173, 142 P.3d 162 (2006).....33, 36, 37

Kucera v. State, Dept. of Trans.,
140 Wn.2d 200, 995 P.2d 63 (2000).....17, 18

Limstrom v. Ladenburg, 136 Wn.2d 595, 963 P.2d 869 (1998).....19, 24

Nat'l Sec. Archive v. U.S. Dep't of Def.,
530 F. Supp.2d 198 (D.D.C. 2008).....25, 26

Nissen v. Pierce Cnty., 183 Wn.2d 863, 357 P.3d 45 (2015).....1, 15, 43

NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975).....25

Northwest Gas Ass'n v. Washington Util. & Transp. Comm'n,
141 Wn. App. 98, 168 P.3d 443 (2007).....18

Planned Parenthood Federation of America Inc. v. Bucci,
1997 WL 133313, *5-6 (S.D.N.Y., March 24, 1997) *aff'd*, 152 F.3d 920
(2d Cir. 1998).....27

San Juan Cnty. v. No New Gas Tax,
160 Wn.2d 141, 157 P.3d 831 (2007) 17

Seattle Firefighters Union v. Hollister,
48 Wn.App. 129, 737 P.2d 1302 (1987).....46, 47

Seattle Times Co. v. Serko, 170 Wash.2d 581, 243 P.3d 919 (2010)...6, 19

Soter v. Cowles Publ'g Co.,
162 Wn.2d 716, 174 P.3d 60 (2007)..... .....6, 19

Spokane Research & Defense Fund v. City of Spokane,
155 Wn.2d 89, 117 P.3d 1117 (2005)("SRDF").....1

State v. Butterworth, 48 Wn. App. 152, 737 P.2d 1297 (1987).....44, 45

State v. Cheatam, 112 Wn. App. 778, 51 P.3d 138 (2002)..... 45

State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808
(1986).....43, 44

State v. Hathaway, 161 Wn. App. 634, 251 P.3d 253 (2011)..... .45

State v. Holmes, 98 Wn.2d 590, 657 P.2d 770 (1983).....35

State v. Jordan, 160 Wn.2d 121, 156 P.3d 893 (2007).....45

State v. Tracer, 173 Wn.2d 708, 272 P.3d 199 (2012).....28

State v. Young, 123 Wn.2d 173, 867 P.2d 593 (1994).....44

Spokane Police Guild v. Washington State Liquor Control Board,
112 Wn.2d 30, 769 P.2d 283 (1989).....46

Tacoma Public Library v. Woessner,
90 Wn. App. 205, 951 P.2d 357 (1998).....15

Tyler Pipe Indus. v. Dep't of Revenue,
96 Wn.2d 785, 638 P.2d 1213 (1982)..... ....4, 17, 18

VoteHemp, Inc. v. Drug Enforcement Admin.,
237 F. Supp.2d 55 (D.D.C. 2002).....25

Wilson v. Nord, 23 Wn. App. 366, 597 P.2d 914 (1979).....8, 9

Constitution

WA. CONST. ART. I § 7.... 40

Statutes

RCW 42.56.540 ....passim

RCW 42.56.550(1).....6

RCW 42.56.070(1).....14, 26, 29

RCW 42.56.070(9).....passim

RCW 42.56.080.....16, 26, 46

RCW 42.56.210(2)..... .....21, 30, 31, 35, 38

RCW 42.56.230.....passim

RCW 42.56.230(1).....3, 7, 31, 34

RCW 42.56.230(2)(a)(ii). 3, 7, 31

RCW 42.56.030.....1, 19, 31, 32, 42

RCW 42.56.050.....31, 39

Attorney General Opinions

1998 Wash. Op. Atty. Gen. No 2 (1998).....23

1988 Letter Op. Atty. Gen. No. 12 (1988) 22

1975 Wash. Op. Atty. Gen. No. 15 (1975).....23

Other Sources

Merriam Webster Dictionary, *available at* http://www.merriam-webster.com/dictionary/specifically.....12, 32

I. INTRODUCTION

Freedom Foundation ("the Foundation") submitted two Public Records Act ("PRA") requests to the Washington State Department of Social and Health Services ("DSHS"). SEIU Local 925 ("SEIU") argues the PRA bars access to these records. Both the Foundation and DSHS disagree.

"The PRA is a strongly worded mandate for broad disclosure of public records." *Nissen v. Pierce Cnty.*, 183 Wn.2d 863, 357 P.3d 45, 52 (2015). As this Court has repeatedly affirmed, "the core policy underpinning the PRA [is] the public's right to a transparent government. That policy, itself embodied in the statutory text, guides our interpretation of the PRA." *Id.* at 53. *See also Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005)("*SRDF*"). Any limitations on disclosure must be narrowly construed to honor the PRA's strong public policy mandating openness and disclosure. *See* RCW 42.56.030.

To prevail, SEIU must persuade this Court to redefine and vastly expand the narrow "commercial purposes" prohibition in RCW 42.56.070(9), overturn its longstanding rejection of the "connect-the-dots" argument, and create a broad new constitutional right of privacy that dramatically invades the rights of nongovernmental parties. Each legal theory would turn the PRA's guiding policy on its head, and render most

public information exempt or prohibited from disclosure.

If SEIU prevails, the PRA will become a complicated statute which imposes an intimidating and invasive discovery burden on the State *and* requestors exercising their statutory right to access public records. SEIU best serves its interests by prolonging this case and introducing massive confusion into the the PRA. Washington courts will be flooded with new litigation that will be necessary to answer questions about the PRA's long-settled scope and meaning. This Court should decline the union's invitation to inject ambiguity into provisions of a law where none currently resides.

SEIU's seeks to weaken one of Washingtonians' strongest democratic controls and prejudice those who seek to use it. SEIU's arguments, if accepted, will enable private parties and the government to intimidate requestors and seriously chill rights protected by the PRA and the U.S. and Washington constitutions. SEIU's arguments are as dangerous as they are meritless.

II. CROSS-APPELLANT'S ASSIGNMENTS OF ERROR

1. Did the trial court err by granting a TRO based on CR 65's notice requirements where the movant failed to satisfy the legal requirements for a TRO?

2. Did the trial court err in concluding that SEIU, which represents

childcare providers, possessed standing to assert PRA exemptions pursuant to RCW 42.56.230(2)(a)(ii) and RCW 42.56.230(1), allegedly covering children and welfare recipients who are not union members, not members of the provider bargaining unit, and who have never consented to the union's representation?

3. Did the trial court err in concluding that a nongovernmental party has standing under RCW 42.56.540 to invoke the "commercial purposes" prohibition in RCW 42.56.070(9)?

III. STATEMENT OF THE CASE

On October 31, 2014, the Foundation submitted the following two PRA requests to DSHS: (1) a list of all FFN and/or license exempt providers (family, friend, and neighbor childcare providers) who received payments from DSHS within the past year as well as contact information including their name, business name, mailing address, email address, and phone number; (2) a list of the same information for FFN and/or license-exempt providers from whom DSHS has withheld payments to SEIU 925 within the past year. FFNs are license exempt childcare providers who receive funding under the "Family Friends and Neighbor" program.

DSHS notified SEIU of this request on November 24, 2014, and gave SEIU until December 10, 2014, to obtain an injunction preventing disclosure. On December 11, 2014, SEIU filed the instant lawsuit in

Thurston County Superior Court, noting its TRO motion for December 18, 2014. The Court considered SEIU's TRO motion on December 19, 2014. Before the TRO hearing, counsel for both SEIU and DSHS communicated frequently, and DSHS twice agreed to delay the disclosure date.

The trial court issued a TRO on December 19, 2014. CP 375-377. The court noted in its decision that:

> there is a real question in my mind about the interaction between *Tyler Pipe* and the *Ameriquest* case [148 Wn.App. 145, 155-56] with what the Court does at this stage, and that is the request for a temporary restraining order in the context of a Public Records Act case... There is admittedly a conflict, a tension between that apparent standard and the *Tyler Pipe* standard of what needs to be shown in order to be entitled to injunctive relief at the stage of a temporary restraining order... I am left with the result that the *Tyler Pipe* standard, while still applicable, is construed in the context of the *Ameriquest* case which causes this court great hesitancy to deny a temporary restraining order in a public records case[.]

RP 12/19/14 at 31-32. At the same hearing, the trial court "expressly announce[d]" and notified the parties that at the January 9, 2015 preliminary injunction hearing, they should be prepared for the court to consolidate the preliminary injunction hearing with the permanent injunction hearing on the merits. *Id.* at 33-34.

At the January 9, 2015 hearing, the trial court consolidated the preliminary and permanent injunction hearings, RP 01/09/15 at 32-33, and rejected SEIU's request for injunctive relief in its entirety. CP

511-522. The Court extended the TRO for an additional 20 days in order to allow SEIU to seek and secure an order from the Court of Appeals staying the expiration of the TRO pending the resolution of the case. RP 01/09/15 at 46. The trial court signed and entered the final order on May 1, 2015. SEIU appealed the final judgment to the Court of Appeals, Division II, and on May 18, 2015, Commissioner Schmidt stayed the trial court's May 1, 2015 order and extended the TRO until the conclusion of the appeal.[1] The Foundation cross-appealed to this Court, which has retained jurisdiction until it decides the Foundation's request for direct review. SEIU opposes direct review by this Court. Over a year after the Foundation's initial PRA request, SEIU has failed to make any legal showing sufficient to enjoin disclosure of the records, and yet those records remain undisclosed.

IV. ARGUMENT

A. THE TRIAL COURT ERRED BY FINDING SEIU HAD STANDING TO SEEK AN INJUNCTION ON THE BASIS OF EXEMPTIONS IN RCW 42.56.230 AND THE COMMERCIAL PURPOSE PROHIBITION IN RCW 42.56.070(9).

Decisions on standing are reviewed *de novo*. *Knight v City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011). SEIU sought to enjoin the disclosure of public records under RCW 42.56.540 on the basis of, *inter*

[1] *See* Appendix to Cross-Appellant's Grounds for Direct Review at 110

alia, exemptions in RCW 42.56.230 and a prohibition in RCW 42.56.070(9). Both § 540 and its interpretive case law explain the legal requirements a party must satisfy to obtain an injunction. As this Court held in *Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington*, 177 Wn. 2d 467, 486-87, 300 P.3d 799, 809 (2013):

> The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies. *Id.* at 612, 963 P.2d 869; RCW 42.56.540, .550(1); *see also Ames v. City of Fircrest*, 71 Wash.App. 284, 296, 857 P.2d 1083 (1993). Thus, if an agency is claiming an exemption, the agency bears the burden of proving it applies. RCW 42.56.550(1). ***If it is another party, besides an agency, that is seeking to prevent disclosure, then that party must seek an injunction. RCW 42.56.540. In such a case, the party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function.*** *Id.; see Soter v. Cowles Publ'g Co.*, 162 Wash.2d 716, 757, 174 P.3d 60 (2007); *see also Seattle Times Co. v. Serko*, 170 Wash.2d 581, 591, 243 P.3d 919 (2010).

(Emphasis added). Therefore, under RCW 42.56.540, a party seeking nondisclosure must prove each of the above three elements. SEIU has failed to demonstrate "that the record in question specifically pertains to" it, and therefore lacks standing to seek relief pursuant to RCW 42.56.540. *Ameriquest*, 177 Wn. 2d at 487.

SEIU argues that the requested lists of information related to FFN providers is actually something else entirely: a list containing the personal information of children and welfare recipients, exempted from disclosure

by RCW 42.56.230(2)(a)(ii)[2] and RCW 42.56.230(1),[3] respectively. SEIU also argues that the requested records should be enjoined from disclosure under RCW 42.56.070(9), which prohibits the government from disclosing lists of individuals for commercial purposes. SEIU lacks standing to assert exemptions on behalf of third parties who are neither union members nor members of the bargaining unit, and it certainly lacks standing to assert a prohibition only the government may assert.[4]

SEIU states in a footnote of its opening brief that "the trial court correctly held that... Local 925 had standing to argue the application of any appropriate exemptions to disclosure, including those exemptions that protect interests not related to Local 925," "because the records pertain to Local 925's members." *See* Appellant's Brief ("App. Br.") at 28-29, n. 15. At the January 9, 2015 hearing, the trial court ruled that SEIU had standing to assert exemptions on behalf of children and welfare recipients under RCW 42.56.230, incorporating its reasoning from a related, prior case.[5] RP 01/09/15 at 33. There, the trial court denied a request for an

---

[2] RCW 42.56.230(2)(a)(ii) exempts from disclosure "personal information for a child enrolled in a public or nonprofit program serving or pertaining to children... including but not limited to early learning or child care services "

[3] RCW 42.56.230(1) exempts from disclosure "personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients."

[4] RCW 42 56.070(9).

[5] *SEIU Healthcare 775NW v. DSHS & Freedom Foundation*, Thurston Co. Superior Ct No. 14-2-01903-1.

injunction by SEIU Local 775 under substantially identical facts,[6] but erroneously concluded that the union had standing to assert the PRA exemption in RCW 42.56.230(1) on behalf of welfare recipients. The trial court based its conclusion on a Division II decision (also called *Ameriquest*) and held that SEIU was entitled "to argue the application of any appropriate exemptions to disclosure." RP 10/16/14 at 51-52. *Ameriquest Mortgage Co. v. State Atty. Gen.* ("Division II *Ameriquest*"), 148 Wn. App. 145, 166, 199 P.3d 468, 477 (2009) *aff'd on other grounds sub nom. Ameriquest*, 170 Wn.2d 418, 241 P.3d 1245 (2010).

1. The trial court erred by relying upon Division II *Ameriquest* to conclude SEIU had standing because that holding was neither applying nor interpreting RCW 42.56.540.

The trial court erred in concluding SEIU had standing based on Division II *Ameriquest* because Division II in that case granted standing to a nongovernmental party under the "arbitrary and capricious" standard, not the standing requirement in RCW 42.56.540. *Ameriquest*, 148 Wn. App. at 166-67. According to Division II's reasoning, any party has standing to seek judicial review of an agency's exercise of discretion under the "arbitrary and capricious" standard if the discretionary act will affect the party. *Id.* Citing *Wilson v. Nord*, 23 Wn. App. 366, 373, 597

[6] That case is now fully briefed and awaiting argument before the Court of Appeals. *See SEIU 775 v DSHS and Freedom Foundation*, Wa. Ct. App., No. 46797-6-II.

P.2d 914 (1979)—another case where the plaintiff challenged an agency's decision as arbitrary and capricious—Division II stated that "a complainant *with standing* has a fundamental right to have an agency abide by the constitution, statutes, and regulations which affect the agency's exercise of discretion." *Ameriquest*, 148 Wn. App. at 166-67 (emphasis added). Division II *Ameriquest* did not address standing under § 540, which contains *its own* standing requirements. SEIU fails to satisfy § 540's standing requirements.

In the instant case, SEIU did not claim it possessed standing under the "arbitrary and capricious" standard discussed in *Wilson* and Division II *Ameriquest*.[7] *See* CP 11-15. Rather, SEIU claimed standing under RCW 42.56.540. But even if Division II *Ameriquest* did apply here, it only applies to parties who already have standing. *Ameriquest*, 148 Wn. App. at 166. Here, SEIU lacks standing because it is not "a person who is named in the record or to whom the record specifically pertains." RCW 42.56.540.[8] This Court in 2013 reaffirmed § 540's standing requirement. *Ameriquest*, 177 Wn. 2d at 486-87 ("*[T]he party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and*

[7] The "arbitrary and capricious" standard "is an extraordinarily high bar" for SEIU to meet. *See Ameriquest*, 148 Wn.App. at 167 The union never mentioned this standard in the pleadings, briefings, and arguments below

[8] *See* § IV(A)(2), *infra*, for more discussion.

would substantially and irreparably harm that party or a vital government function.") (emphasis added). Thus, Division II's "arbitrary and capricious" standing threshold is inapposite to the instant case and the trial court erred by applying it.

2. Alternatively, the trial court erred by concluding SEIU had standing to represent the interests of children and welfare recipients.

SEIU must still establish it is "a complainant *with standing,*" *Ameriquest*, 148 Wn. App. at 166-67, consistent with constitutional requirements even if Division II *Ameriquest* somehow rewrites and lowers the PRA's own standing requirements. SEIU brings suit solely under RCW 42.56.540, which provides that only a person "named in the record or to whom the record specifically pertains" may seek an injunction. CP 7 at ¶ 5. SEIU does not argue it is a person named in the records or a person to whom the records specifically pertain. Instead, SEIU claims it possesses associational standing on behalf of FFNs. CP 502. To establish associational standing, SEIU must satisfy *each* of the following elements:

> (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members... [T]he first two prongs are constitutional in that they ensure that article III, section 2's 'case or controversy' requirements are satisfied.

Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 213-15, 45 P.3d 186, 189 *amended on denial of reconsideration*, 50 P.3d 618 (Wash. 2002). Every complainant must satisfy the basic, constitutional standing requirements regardless of the interests or claims asserted. SEIU fails to satisfy the two constitutional elements of the *Spokane Airports* test, and therefore lacks standing to assert PRA exemptions on behalf of children and welfare recipients.[9]

a. Children and welfare recipients are neither SEIU members nor bargaining unit members.

First, SEIU cannot establish that its *members* would otherwise have standing to bring this suit in their own right. Children and welfare recipients are neither SEIU members nor bargaining unit members. In *Des Moines Marina Ass'n v City of Des Moines*, Division I ruled that an association lacked standing to protect the rights of persons that were not members of the association. 124 Wn. App. 282, 291-92, 100 P.3d 310 (2004). Here, SEIU has failed to present any evidence that children and welfare recipients are SEIU members. Thus, SEIU cannot represent their interests.

b. ***Children and welfare recipients would not have standing to seek to enjoin these records.***

[9] Element two speaks of the "interests" that the organization seeks to protect. Here, the relevant interests are those of third party children and welfare recipients Nothing in the record suggests SEIU or FFNs have the ability or right to safeguard the interests of children or welfare recipients.

SEIU cannot satisfy the first *Spokane Airports* element[10] because children and welfare recipients do not have standing to seek an injunction prohibiting disclosure of the requested records. Neither children nor welfare recipients are "named in the record" or persons "to whom the record *specifically* pertains." RCW 42.56.540 (emphasis added). The PRA does not define "specifically," but the Merriam-Webster Dictionary defines it as "clearly and exactly presented or stated; relating to a particular person..."[11] SEIU argues that disclosure of FFN-specific information is effectively the personal information of children and welfare recipients. App. Br. at 29-30. As explained more fully below, this argument is meritless. *See infra*, § IV(D). SEIU admits "the information set to be disclosed is comprised of the name, address, and contact information of the provider[.]" Children and welfare recipients are not named in the records, and the requested records do not pertain to them. Clearly a public record containing FFN information does not specifically pertain to children and welfare recipients, so neither of those third parties "otherwise have standing to sue in their own right," *Spokane Airports*, 146 Wn.2d at 213-14, and SEIU lacks associational standing for these issues.

---

[10] "The members of the organization would otherwise have standing to sue in their own right." *Spokane Airports*, 146 Wn.2d at 213.

[11] *Merriam Webster Dictionary*, available at http://www.merriam-webster.com/dictionary/specifically (last visited Oct 29, 2015).

c. *The interests SEIU seeks to protect by asserting PRA exemptions in RCW 42.56.230 are not germane to SEIU's purpose.*

Third, the *interests* SEIU seeks to protect as to children and welfare recipients are not germane to its purpose. *Spokane Airports*' second prong speaks of "interests," not just claims. *Spokane Airports*, 146 Wn.2d at 213-14.[12] SEIU, as the alleged exclusive bargaining representative for childcare providers, is legally required to represent providers, not children or welfare recipients. In fact, if the interests of providers and children/welfare recipients conflict, SEIU is legally required to represent the interests of providers to the detriment of those third parties. In the Complaint, SEIU explains that it "brings this lawsuit *on behalf of all members of its statewide bargaining unit* who are impacted by the PRA request at issue in this case and who would be impacted by the disclosure of the requested records." CP 7 at ¶ 1 (emphasis added). Safeguarding the interests of children and welfare recipients is not SEIU's purpose, either organizationally or in this lawsuit. Furthermore, and perhaps most importantly, children and welfare recipients have not authorized SEIU 775 to represent them. The interests SEIU 775 alleges to protect are not germane to its purpose, and SEIU 775 does not have standing for these issues.

---

[12] "[T]he interests that the organization seeks to protect are germane to its purpose[ ]" *Id*

3. The trial court erred by granting standing to SEIU to seek an injunction under RCW 42.56.070(9).

RCW 42.56.540 does not confer standing on any nongovernmental party to seek an injunction based on the commercial purposes prohibition in RCW 42.56.070(9).[13] As stated above, RCW 42.56.540 only confers standing on a party to seek to enjoin disclosure if the party can show that the record "specifically pertains to that party" *and* disclosure "would clearly not be in the public interest and would substantially and irreparably damage any person or... vital government function." *Id* (emphasis added); *Ameriquest*, 177 Wn. 2d at 486-87. According to RCW 42.56.070(1), *agencies* must disclose all requested public records "unless the record falls within the specific exemptions[14] of *subsection [9] of this section."[15]

The PRA dictates that only an agency may determine whether the requestor's purpose for public records is commercial, and subsequently

---

[13] RCW 42 56.070(9) states in part:

> (9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes.

RCW 42.56.540 states:

> The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

[14] **It is highly relevant that the PRA, itself, refers to the commercial purpose prohibition *as an exemption*.** *See infra*, § IV(C), for a fuller discussion.

[15] Subsection (6), containing the commercial purposes prohibition, is now subsection (9).

disclose or withhold the records. Even an agency may not seek an injunction on the basis of the commercial purposes prohibition. This is for good reason. Looking no further than the instant case, allowing a nongovernmental party to assert the commercial purposes prohibition empowers that party to indefinitely delay disclosure and put a requestor's beliefs on trial. The result is not any advancement in the interpretation of the PRA, but rather a profound waste of the courts' and parties' time.

If adopted, SEIU's arguments will dramatically alter the PRA's "plain language" and "core," "underpinning," pro-disclosure policy, *see Nissen*, 357 P.3d at 53, by equipping individuals who want to conceal public records with a statutory device (RCW 42.56.540) to intimidate and threaten disfavored requestors—regardless of whether the PRA prohibits disclosure. Requestors will risk expensive litigation, invasive discovery, and invasions of privacy all for simply exercising their PRA rights. That is an affront to the public's right to access public records. RCW 42.56.550(3); *see also Tacoma Public Library v. Woessner*, 90 Wn.App. 205, 212, 951 P.2d 357 (1998) ("[T]he public should have full access to information concerning the working of government.").

The commercial purposes provision permits only an agency to inquire

into a requestor's intended purpose. RCW 42.56.080[16] This *limited* authority is granted to the agency through RCW 42.56.070(9), not a nongovernmental party through RCW 42.56.540.[17] Because no private party has standing under RCW 42.56.540 to seek a injunction on the basis of the commercial purpose prohibition in RCW 42.56.070(9), SEIU lacks standing on this issue.

B. *THE TRIAL COURT ERRED BY ISSUING A TRO WHEN SEIU FAILED TO MEET THE LEGAL STANDARD FOR OBTAINING A TRO.*

The standard to obtain an injunction under RCW 42.56.540 is clear.

> The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies... ***In such a case, the party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function.***

Ameriquest, 177 Wn.2d at 486-87 (emphasis added). Therefore, under RCW 42.56.540, a party seeking nondisclosure must prove each of the

---

[16] "Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons." RCW 42.56 080.

[17] SEIU's attempt to distinguish "prohibitions" from "exemptions," App. Br. at 18-20, actually supports the Foundation's argument that the RCW 42.56.540 does not confer standing on SEIU to seek an injunction under RCW 42 56 070(9). If this Court holds there the terms are distinct such that their meanings should be construed differently, this supports the argument that a private party may not seek to enjoin, under RCW 42.56 540, records from disclosure under RCW 42 56 070(9). Conversely, if this Court holds there is no meaningful distinction, then this Court must interpret "prohibitions" in the same manner as "exemptions" in the PRA, i.e. prohibitions must be narrowly construed just as exemptions are. Either determination ends with disclosure of the records.

three elements cited by the Supreme Court in *Ameriquest*. 177 Wn.2d at 487; RCW 42.56.540. Additionally, to obtain an injunction, SEIU must show:

> (1) it has a clear legal or equitable right; (2) that it has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to it.

Kucera v. State. Dept. of Trans., 140 Wn.2d 200, 209, 995 P.2d 63 (2000).[18] At the TRO and preliminary injunction stages, a party need only prove that it is *likely* to meet the above elements. *San Juan Cnty. v. No New Gas Tax*, 160 Wn.2d 141, 154, 157 P.3d 831, 837 (2007).

The trial court issued a TRO despite SEIU's failure to satisfy any of the above requirements. RP 12/19/14 at 31-33; CP 375-77. In fact, the trial court did not even undertake the required *Kucera* analysis. RP 12/19/14 at 31-33 ("I am left with the result that the *Tyler Pipe* standard, while still applicable, is construed in the context of the [Division II] *Ameriquest* case which causes this court great hesitancy to deny a temporary restraining order in a public records case on temporary restraining order").[19] The trial court then briefly extended the TRO in its final order for twenty days, and

---

[18] *Kucera* sets forth the same injunction standard expressed in *Tyler Pipe Indus. v. Dep't of Revenue*, 96 Wn 2d 785, 638 P.2d 1213 (1982). The trial court referred to *Tyler Pipe*

[19] CR 65(a)(2) states:

> Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.

Division II stayed the TRO's expiration until the conclusion of the case.[20] Thus, more than a year after the Foundation's request, SEIU has managed to prevent disclosure of public records *without ever satisfying the requirements necessary for acquiring injunctive relief.*

In both *Northwest Gas Ass'n v. Washington Util. & Transp. Comm'n*, 141 Wn.App. 98, 114-15 168 P.3d 443 (2007), and *Ameriquest*, 148 Wn.App. 145, 155-56, Division II held that a trial court must grant a TRO and/or preliminary injunction in a PRA injunction case even when a movant fails to prove the PRA injunction requirements in *Kucera* and this Court's *Ameriquest* decision. Division II claimed to be using the *Tyler Pipe* standard, 148 Wn. App. at 157, but in fact held that unless the court notified the parties prior to the hearing that it was merging the preliminary and permanent injunctions, CR 65(a)(2) required trial courts to forego the normal *Tyler Pipe* analysis and grant an injunction. *Id.* at 154-55.

Division II *Ameriquest* thus requires trial courts to automatically issue TROs in PRA cases, regardless of the merit (or lack thereof) of the movant's arguments. This places Division II's *NW Gas* and *Ameriquest* cases in direct conflict with this Court's holdings in *Ameriquest*,[21] *Limstrom*,[22] *Soter*,[23] *Serko*,[24] Division One's holding in *Ames*,[25] and the

---

[20] *See* Appendix to Cross-Appellant's Grounds for Direct Review at 110.
[21] 177 Wn.2d at 486-87.
[22] *Limstrom v. Ladenburg*, 136 Wn.2d 595, 612, 963 P.2d 869 (1998)

PRA's plain language.[26] Those automatic TROs are then extended throughout the appeal process to "preserve the fruits of the appeal," allowing meritless injunctions to wrongfully persist for years. Issuing a TRO where the petitioning party fails to satisfy the TRO requirements severely prejudices the requestor, provides an unjust windfall to the party who seeks to enjoin disclosure of public records, and plainly frustrates the PRA's overriding public policy. *See* RCW 42.56.030.

To the extent Division II precedent requires trial courts to forego the proper legal analysis and issue injunctive relief solely on the basis of CR 65(a)(2), it should be overturned. This Court has clearly and repeatedly explained the standard one must meet to obtain an injunction under RCW 42.56.540. CR 65(a)(2) should not be a vehicle by which parties can evade this Court's standards for injunctive relief as well as the PRA's text and policy.

C. THE TRIAL COURT CORRECTLY DENIED AN INJUNCTION BASED ON RCW 42.56.070(9).

SEIU argues:

> Freedom Foundation seeks a list of provider names and contact information to economically injure an entity it apparently perceives as an economic competitor, to bring credit or attention to its own extreme political views, to increase its membership and,

---

[23] *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 757, 174 P.3d 60 (2007)
[24] *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010).
[25] *Ames v. City of Fircrest*, 71 Wn. App. 284, 292, 857 P.2d 1083 (1993).
[26] RCW 42.56.540.

> importantly, its funds, to decrease the membership and funds of Local 925, and to assist the commercial businesses with which it is associated.

App. Br. at 22. At the outset, SEIU lacks any factual or evidentiary support for these claims. The Foundation provided sworn testimony that it has no intention of using the requested lists for commercial purposes, fundraising directly from providers, or assisting any third party commercial businesses. CP 337-38. Further, the Foundation has never attempted to conceal its labor reform mission. It believes compulsory public-sector unionism is bad public policy and an affront to liberty. But that mission is clearly not commercial. Further, SEIU's attempt to compile and characterize snippets of Foundation messaging as "commercial" woefully misses the mark. Additionally, most of SEIU's "evidence" is immaterial to the only relevant inquiry under RCW 42.56.070(9): the Foundation's *intended use of the list of provider names*, not the Foundation's activities in *other contexts*.

This Court should reject SEIU's proffered definition of "commercial purposes." Its proposed definition is cobbled together from cherry-picked Opinions of the Washington Attorney General ("AGOs") and inapposite federal case law. The union also argues the contradictory claim that while "exemptions" must be construed narrowly so as not to frustrate the PRA's pro-disclosure policy, RCW 42.56.070(9) is a "prohibition" and should

therefore be construed "broadly." App. Br. at 18.

SEIU's expansive definition of "commercial purposes" violates the PRA's language and meaning, manipulates the plain meaning of "commercial," and guts the PRA's policy by sweeping a great many noncommercial activities under its umbrella. The Foundation, on the other hand, offers a simple definition for "commercial purposes" which arises from the phrase's plain meaning, accords with Attorney General Opinions and case law, and honors the PRA's language and policy: *for an agency to properly withhold records under RCW 42.56.070(9), a requestor's primary purpose for the requested records must be to achieve financial profit through the direct use of the requested records.*

This Court should reject SEIU's definition and affirm the trial court's holding. Alternatively, SEIU still failed to satisfy the remaining requirements of RCW 42.56.540. Additionally, RCW 42.56.210(2) mandates disclosure.

1. Attorney General Opinions support a narrow—not expansive—definition for commercial purposes.

AGOs are persuasive authorities. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011).[27] In a 1988 AGO,[28] the

[27] However, courts "remain[] the final authority on the proper construction of a statute. *Davis v King Cnty.*, 77 Wn 2d 930, 934, 468 P 2d 679 (1970). When AGOs conflict with court opinions, they decrease in persuasiveness. *Five Corners*, 173 Wn.2d at 308.

Attorney General ("AG") synthesized prior AGOs addressing the meaning of the PRA's commercial purposes prohibition:

> Synthesized, those opinions state that agencies shall not provide a list of the names of natural persons (not including corporations, associations, etc.) when the list was created by the agency, and (a) the requester is engaged in a commercial (***profit-expecting***) activity, (b) the requester intends to contact or in some way personally affect the listed individuals, and (c) the purpose of the contact is to facilitate the commercial activity.

1988 Letter Op. Atty. Gen. No. 12 at n. 4 (emphasis added). Clearly, the AGO defined "commercial" as "profit-expecting. *Id.* The Foundation is not engaging in or facilitating any profit-expecting activity by using the public records to contact providers and inform them of their constitutional rights. CP 337-38.

The 1988 AGO also discussed potential safeguards to aid the government's compliance with the commercial purposes prohibition. According to the AG, a requirement compelling a requestor to enter into a hold harmless agreement went "beyond the *limited barrier to access contemplated by the inquiry permitted under*" the commercial purposes prohibition. 1988 Letter Op. Att'y Gen. No. 12 at 11 (emphasis added). For any *government-facilitated* safeguards to abide by the commercial purposes provision, the safeguard must not place any "unreasonable burden" on the requestor. *Id.* The AG concluded that a requirement for

---

[28] Available at http://www.atg.wa.gov/ago-opinions confidential-income-information#sthash.bUO2Xvip.dpuf (last visited Oct. 30, 2015)

written assurance that the requestor's purpose is noncommercial is permissible because it "does not add a burden to access that would be impermissible under the statute." *Id.* The 1988 AGO contemplates a *limited, government-facilitated* inquiry under RCW 42.56.070(9). The Foundation satisfied that inquiry here. CP 337-38.

The 1975 AGO[29] alleged it was adopting a "broad definition," but still concluded that "commercial" referred to "any 'profit expecting' business activity." 1975 Wash. Op. Atty. Gen. No. 15 at 10 (1975). Likewise, the 1998 AGO[30] stated that disclosure is prohibited where the requestor intends to use the list to facilitate "any profit expecting business activity." 1998 Wash. Op. Atty. Gen. No 2 at 2 (1998). The AGOs[31] achieve the opposite result SEIU hopes, and actually confirm that the Foundation's purpose for the instant lists is noncommercial. CP 337-38 at ¶ 9. The AGOs' actual definition of "commercial," unlike the union's interpretation, does not wreak havoc on the PRA's policy. In fact, it lends substantial credence to the Foundation's proffered definition.

---

[29] Available at http://www.atg.wa.gov/ago-opinions/access-lists-individuals-under-initiative-no-276 (last visited Oct. 30, 2015).

[30] Available at http://www.atg.wa.gov/ago-opinions/authority-public-agencies-allow-inspection-and-copying-lists-individuals (last visited Oct. 30, 2015).

[31] SEIU cites to Exec. Order 00-03 (Apr. 25, 2000), but that does not change this analysis because the Governor's Order merely incorporated the definition set forth in the AGOs.

2. **Federal case law interpreting the Freedom of Information and Lanham Acts do not support an expansive definition of commercial purposes in RCW 42.56.070(9).**

   a. ***SEIU's cited FOIA cases do not support an expansive definition of commercial purposes.***

SEIU argues that federal cases interpreting provisions of the Freedom of Information Act ("FOIA") and the Lanham Act support an expansive definition of "commercial purposes." Washington courts often look to judicial constructions of FOIA in construing *similar* provisions in the PRA. *Limstrom*, 136 Wn.2d at 608. SEIU's cited cases are not similar.

First, it must be noted that "[d]espite the close parallel between the state act and FOIA, the state act is more severe than the federal act in many areas." *Hearst v. Hoppe*, 90 Wn.2d 123, 129, 580 P.3d 246 (1978). Also, SEIU's cited FOIA cases do not discuss whether disclosure is barred but rather address the availability of fee waivers and awards of attorneys' fees. This key distinction is important because, like the PRA, the U.S. Supreme Court has "recognized a mandate to construe the FOIA broadly, and to construe the exemptions narrowly." *Id.* at 128-29 (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136-37 (1975) and other federal cases). The FOIA cases SEIU cites were not interpreted by the federal courts under this standard because those cases did not involve disclosure

itself, but only fee waivers.[32] Thus, the FOIA cases cited by SEIU are unhelpful in interpreting FOIA's own appropriate disclosure standard, the exact issue at stake in the instant discussion.

In *VoteHemp, Inc. v. Drug Enforcement Admin.*, 237 F.Supp.2d 55, 64-65 (D.D.C. 2002), the federal district court disqualified the requestor from obtaining a fee waiver (again, the decision did not address the issue of disclosure, itself) because the requestor was obviously aligned with companies and businesses that would commercially profit from the requestor's contact with the persons listed in the federal record. The Foundation is not aligned with any commercial interests, so its records request will not "directly benefit those who seek to make a profit from" FFNs' newly-attained knowledge. *Id.* at 65. Indeed, it is questionable whether any commercial entity could benefit at all because *government* employees learn of their choice to cease financially supporting a *public-sector* union.

Nat'l Sec. Archive v. U.S. Dep't of Def., 530 F.Supp.2d 198, 201 (D.D.C. 2008), also does not deal with the *disclosure* of records, and is likewise inapposite. Additionally, *Nat'l Sec. Archive* addressed whether the requestor was entitled to attorneys' fees for winning its claim that it was organizationally entitled to a FOIA fee waiver. The court concluded

[32] SEIU acknowledges as much in its brief, although tucked away in a footnote. App. Br. at 15, n. 9.

that even though NSA was a nonprofit, its own commercial interest in procuring FOIA materials as cheaply as possible was enough of a motivating factor in its underlying lawsuit to bar the award of attorneys' fees for litigating the suit. Both cases are legally and factually inapposite to the instant dispute, where the *disclosure* of records is at stake. *Contra* App. Br. at 16, n. 10.

SEIU leaves another highly relevant factual distinction out of its discussion of the FOIA authorities. In both of the above cases, the government, not a private third party, argued that the requestors' intent was "commercial." This accords with the PRA's provision that the government, not a private party, may inquire whether the requestor's purpose for the records is commercial. RCW 42.56.070(1); RCW 42.56.080. As discussed *supra* (§ IV(C)(1)), the identity of the party alleging commercial intent is crucial to properly understanding the PRA. None of SEIU's cited cases support its expansive definition of commercial purposes.

b. SEIU's cited Lanham Act cases do not support an expansive definition of commercial purposes.

Next, SEIU turns to Lanham (Trademark) Act cases to justify its expansive definition of "commercial," although the union fails to cite any authority indicating that the Lanham Act is relevant in construing the

PRA. However, even assuming these cases have some bearing on the instant question, they are unpersuasive. The most obvious difference is that the Lanham Act exists to "prevent confusion" about sponsorship, approval, and association between entities, namely by one entity brandishing another's mark. *Brach Van Houten Holding, Inc. v. Save Brach's Coal. for Chicago*, 856 F. Supp. 472, 474 (N.D. Ill. 1994).[33]

Additionally, the relevant inquiry in Lanham Act cases is whether the *actual use of the plaintiff's mark or name* is commercial in nature.[34] *Jews for Jesus v. Brodsky*, 993 F.Supp. 282, 308 (D.N.J 1978) (finding that the defendant sought to harm the plaintiff commercially by intercepting the plaintiff's audience "through the use of deceit and trickery.").

Similarly, in Planned *Parenthood Federation of America Inc. v Bucci*, a court held that the defendant's *actual use of the plaintiff's mark* in its website address was "classically competitive" because the defendant "has taken plaintiff's mark as his own in order to purvey his Internet services—his web site—to an audience intending to access plaintiff's services." 1997 WL 133313, *5-6 (S.D.N.Y., March 24, 1997) *aff'd*, 152 F.3d 920 (2d Cir.

---

[33] For instance, in *Brach*, the District Court concluded that Save Brach's use of Brach's logo was a violation of the Lanham Act 856 F. Supp. at 474 Save Brach's usage of Brach's mark while undertaking attempts to prevent Brach from closing one of its production facilities was sufficiently commercial so as to make the average observer believe that Brach endorsed Save Brach's activities.

[34] SEIU's evidence, if relevant at all, relates to whether the Foundation is engaged in commercial enterprises in general, not to the use to which the Foundation will put the actual list of IP names—which *should* be the only issue.

1998).

The Foundation's alleged behavior, even if accurately portrayed, does not attempt to deceive, misdirect, or confuse FFNs actively seeking SEIU's services. Lanham Act cases are unhelpful and unpersuasive in defining "commercial purposes" in RCW 42.56.070(9). Not only is there no precedent for applying Lanham Act cases to PRA provisions, the facts underlying the above cases plainly differ from the facts here. The trial court correctly held that "based upon powerful preferences for disclosure, conclusion[s] under federal Lanham Act law, with completely different interests, are simply not helpful." RP 10/16/14 at 64.

3. SEIU's distinction between "prohibition" and "exemption" is irrelevant.

SEIU cites to *State v. Tracer*, for the proposition that when the Legislature uses two different words within the same statute, the terms should have distinct meanings. 173 Wn.2d 708, 718, 272 P.3d 199 (2012). SEIU argues that the commercial purposes "prohibition" is absolute. App. Br. at 18. It is clearly not absolute. *See* RCW 42.56.070(9) ("PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees *shall be made available* to those professional associations or educational organizations recognized by their professional licensing or examination board..."). Additionally, the Legislature

apparently intended the commercial purposes prohibition to be construed similarly to exemptions by referring to it as an exemption *in the same statute. See* RCW 42.56.070(1).[35]

Importantly, even if RCW 42.56.070(9) were an absolute prohibition on disclosure of lists for commercial purposes, SEIU simply cannot establish that the Foundation's purpose is "commercial" under any sensible standard.[36] Thus, the distinction in terms lacks relevance. Finally, any meaningful distinction between "prohibition" and "exemption" militates against SEIU's ability to bring suit, as argued *supra*, § IV(A)(3).[37]

4. Alternatively, SEIU did not satisfy the requirements of RCW 42.56.540.

If SEIU's broad definition of commercial purposes is correct, and *if* a

---

[35] Subsection (6) was eventually renumbered subsection (9) (the current location of the commercial purposes prohibition) in 1995. *See* Reviser's Note (available at http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56.070) (last visited November 2, 2015).

[36] Webster's Dictionary provides two definitions of "commercial." WEBSTER'S NEW INT'L DICTIONARY 538 (2d ed. 1954). The first, unhelpfully, states "of or pertinent to commerce, mercantile; hence, variously: occupied with commerce;" etc. The second, more relevantly, states "Having financial profit as the primary aim." The Foundation's proffered definition comports with this second definition.

[37] SEIU devotes a lengthy footnote (App. Br. at 19, n. 12) to various state agencies' treatment of RCW 42.56.070(9)'s commercial purposes prohibition. But this does not help SEIU. These references to the Administrative Code support the Foundation's argument that a nongovernmental party may not seek an injunction based on RCW 42.56.070(9). Secondly, most of the agencies simply indicate they may require written assurance that the requested lists will not be used for commercial purposes, again supporting the Foundation's position. Thirdly, and ironically, most of the references appear in subchapters titled "Exemptions" or the like. That certainly supports the trial court's conclusion that the commercial purposes prohibition must be construed—like all other limitations to disclosure under the PRA—narrowly and in line with the PRA's pro-disclosure policy.

nongovernmental party may seek an injunction on that basis, RCW 42.56.540 still contains requirements SEIU must meet beyond proving an exemption (or prohibition) applies. A party seeking to prevent disclosure of requested records must seek an injunction through RCW 42.56.540 and prove

> (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function.

Ameriquest, 177 Wn. 2d at 487. Simply showing the application of an exemption (or prohibition) does not prove disclosure would disserve the public interest, that someone would be substantially and irreparably harmed, or that disclosure would harm a vital government function. SEIU has produced no authority or evidence to prove these *Ameriquest* elements.

5. Alternatively, RCW 42.56.210(2) mandates disclosure.

RCW 42.56.210(2) states:

> Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, *that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.*

As discussed more fully in §§ IV(B), IV(D)(3), and IV(E), disclosure of

these lists to Freedom Foundation would neither violate any individual's right to privacy as evaluated under RCW 42.56.050 nor jeopardize any vital government function.

D. THE TRIAL COURT CORRECTLY DENIED INJUNCTIVE RELIEF ON THE BASIS THAT THE RECORDS ARE EXEMPT UNDER RCW 42.56.230.

RCW 42.56.230(2)(a)(ii) exempts from disclosure "Personal information "for a child enrolled in a public... program serving or pertaining to children... including but not limited to early learning or child care services." RCW 42.56.230(1) exempts from disclosure "Personal information in any files maintained for... welfare recipients." Like all PRA exemptions, these must be "narrowly construed." RCW 42.56.030. SEIU argues that these exemptions are "squarely applicable" to the information Freedom Foundation seeks. App. Br. at 29. The State and the Foundation disagree.

For at least four reasons, RCW 42.56.230 does not exempt the requested records. One, FFN information does not constitute the "personal information" of children or welfare recipients. Two, SEIU's "functional equivalent" argument constitutes the connect-the-dots argument that Washington Courts routinely reject. Three, RCW 42.56.210(2) mandates disclosure. Fourth and finally, SEIU failed to satisfy the requirements of RCW 42.56.540.

1. The requested records do not constitute the "personal information" of children or welfare recipients.

RCW 42.56.230's exemptions apply to records containing "personal information in any files maintained for welfare recipients" or "for a child enrolled in a public or nonprofit program serving or pertaining to children... including... child care services." The requested FFN information does not constitute the "personal information" of children or welfare recipients.

"Personal information" is not defined by the PRA, but Washington case law has defined it as "information relating to or affecting a *particular* individual. . ." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 411-12, 259 P.3d 190 (2011) (emphasis added). The Merriam-Webster Dictionary defines "particular" as "*used to indicate that one specific person or thing is being referred to and no others.*"[38] The Foundation's requests seek information related to FFNs, not children or welfare recipients. As before, this "personal information" exemption must be "liberally construed" toward disclosure and "narrowly construed" toward nondisclosure, RCW 42.56.030, to honor the PRA's status as "a strongly worded mandate for broad disclosure of public records." *Hoppe*, 90 Wn.2d at 127. Thus, the records released must "indicate that one

[38] *Merriam-Webster Dictionary*, *available at* http://www.merriam-webster.com/dictionary/particular (last visited Nov. 3, 2015) (emphasis added).

specific [child or welfare recipient] is being referred to and no others." That is not the case here.

In both *Bainbridge Island*, 172 Wn.2d at 411-12, and *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 211 (2008), the courts determined that the identities of public employees who faced allegations of sexual misconduct constituted "personal information." Neither case addressed the question of whether those employees' identities constituted the "personal information" of unknown third parties.

The lists of FFN information do not indicate any specific children or welfare recipients, especially not on the face of the record, i.e. the "four corners" of the record—the only evidence this Court may consider in assessing the application of an exemption. *See Koenig*, 158 Wn.2d at 183 ("The dissent cites no statutory language or case law to support the notion we may look beyond the four corners of the records at issue to determine whether they were properly withheld."); *see also Bainbridge Island*, 172 Wn.2d at 414 ("An agency should look to the contents of the document, and not the knowledge of third parties when deciding if the subject of a report has a right to privacy in their identity.").

Additionally, the requested FFN information does not constitute "personal information in any *files maintained for* . . .welfare recipients." RCW 42.56.230(1). *See Lindeman v. Kelso Sch. Dist. No. 458*, 162 Wn.2d

196, 202, 172 P.3d 329 (2007) (distinguishing between types of personal information by stating, "The student file exemption does not exempt any and all personal information—it only exempts personal information 'in any files maintained for students in public schools.'").

> Thus, we construe the student file exemption narrowly, in accordance with the directive of the PDA [now the PRA], by exempting information only when it is both personal *and* maintained for students.

Lindeman, 162 Wn.2d at 202 (holding that when an agency merely places otherwise non-exempt records in a student's personal file, the information was not transformed into information "maintained for students) (emphasis added). This same analysis applies to welfare recipients named in RCW 42.56.230(1). Therefore, the FFN contact information must be both "particular" to specific welfare recipients *and* in "files maintained for welfare recipients."

The types of information in files for welfare recipients relate to the recipient's "assets, resources, income, family circumstances, health, age, educational skills, training, [and] financial expectancies and contingencies." *State v. Holmes*, 98 Wn.2d 590, 598, 657 P.2d 770 (1983). Lists of FFN names and contact information, however, do not relate to this typically held information. Lists of FFN information are maintained by DSHS for purposes related to licensure, billing, and reimbursements paid

to FFNs.[39] Even if it is true that FFN-specific information constitutes the "personal information" of welfare recipients, it has not shown and cannot show that this is the type of personal information maintained in files for welfare recipients.

2. SEIU's argument constitutes the oft-rejected connect-the-dots argument.

SEIU claims that release of FFN information "*would* directly disclose personal information about particular children and welfare recipients." App Br. at 28. The union claims that FFN contact information actually constitutes the personal information of the cared-for child. *Id.* at 29. It claims, incorrectly, that "disclosure of children's personal information is strictly forbidden and there is no need to weight the intrusion of the child's privacy." *Id.* at 31. *Contra* RCW 42.56.210(2). Finally, SEIU claims the requested FFN information discloses firsthand and immediate information that directly relates to the child[.]" App. Br. at 33.

SEIU is mistaken, both factually and legally. The requested information contains no child's personal information. In fact, the identity, location, or familial details of any child (or welfare recipient) are only discernible from the records when combined with additional knowledge acquired from outside the records—such as a child's name, or the name of

[39] Also, the records literally do not contain information in files maintained for welfare recipients.

a child's caretaker, or the fact that a child is cared for by a family member rather than a neighbor, etc. ... Without that additional information gleaned outside the "four corners" of the record, it is impossible to discover from the FFN information the personal information of any child or welfare recipient. *Koenig v. City of Des Moines*, 158 Wn.2d 173, 183, 142 P.3d 162, 166 (2006). Thus, SEIU makes the "connect-the-dots argument Washington courts routinely reject when it argues that nonexempt records are exempt because the disclosed records could be used to acquire exempt information *not* in the disclosed records.

In *Koenig*, this Court held that otherwise nonexempt records did not become exempt due to the possibility that a requestor may learn of exempt information "by referencing sources other than the requested documents[.]" 158 Wn.2d at 187. The *Koenig* requestor sought police records related to a specific, named child victim of sexual assault. *Id.* at 178. Thus, even if the victim's name were redacted, someone could learn the victim's identity by comparing the produced records with the request naming the victim, i.e. by comparing the disclosed documents with other non-disclosed documents. The city attempted to withhold the requested records to conform to (former) RCW 42.17.31901's exemption of "information revealing the identity of child victims of sexual assault."

But this Court noted there was "no statutory language or case law to

support the notion that we may look beyond the four corners of the *records at issue* to determine whether they were properly withheld." 158 Wn.2d at 183 (emphasis added). The fact that a requestor can deduce exempt information from nonexempt records is insufficient to withhold otherwise nonexempt records. *Id.* at 187 (overruling the Court of Appeals).

In *Koenig*, a person could deduce the victim's identity with 100% accuracy if that person compared the disclosed records with *another* existing document. The Supreme Court rejected this argument as the connect-the-dots approach. *Id.* at 187 Here, the "personal information" of specific children or welfare recipients could not be discovered with any assurance. It should likewise be rejected.

In *King County v. Sheehan*, Division I also rejected the connect-the-dots argument because the possibility that nonexempt records could be "used to obtain other personal information from various sources . . . is not sufficient to prevent disclosure" of otherwise nonexempt records. 114 Wn.App. 325, 346 (2002). In *Sheehan*, a county argued releasing a list of police officers' names "could allow someone to track down their home address and other personal, nondisclosable information from other sources . . ." *Id.* at 344-45. Similarly, in the instant case, SEIU argues releasing lists of FFN information allows someone to track down the names of

children or welfare recipients. That "modern life in this age of technology" makes it possible to connect disclosed nonexempt information to undisclosed exempt information, does not operate to render exempt the otherwise nonexempt information. *Id.* at 346. Even aided by technology, an individual would need some additional information to identify from the FFN lists any specific child or welfare recipient.

SEIU's argument that FFN information is also the "personal information" of children or welfare recipients must fail. The PRA's policy of construing exemptions narrowly and existing case law demand it.

3. RCW 42.56.210(2) mandates disclosure.

Disclosure of the requested records is mandated by RCW 42.56.210(2) even if this Court finds either of RCW 42.56.230's exemptions applicable.

> Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, *that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.*

RCW 42.56.210(2). Disclosure violates an individual's right of privacy "only" if disclosure of information about the person: "(1)[w]ould be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." RCW 42.56.050. "Interpreting 'legitimate' to mean 'reasonable,' we have also held that where 'the public interest in efficient

government could be harmed *significantly more* than the public would be served by disclosure,' the public concern is not legitimate and disclosure is not warranted." *Dawson v. Daly*, 120 Wn.2d 782, 798, 845 P.2d 995 (1993).

SEIU cannot establish the requisites of RCW 42.56.050. In fact, the union does not event try. The disclosure of the requested lists simply does not violate children's and welfare recipients' rights of privacy

4. SEIU did not satisfy the requirements of RCW 42.56.540.

See discussion in § IV(C)(4). Even if this Court finds that exemptions in RCW 42.56 230 are relevant here, SEIU has failed to meet (or even argue) the necessary showings in *Ameriquest*, 177 Wn 2d at 486-87.

E. THE TRIAL COURT CORRECTLY DENIED SEIU'S REQUEST FOR INJUNCTIVE RELIEF ON THE BASIS OF ARTICLE I, SECTION 7 OF THE CONSTITUTION.

SEIU argues that "to the extent [this Court] does not [rule 'that the information is exempt as a statutory matter'], it should find that the information is nonetheless exempt under Article I, Section 7 and therefore not subject to disclosure." App. Br. at 40. The union contends that "FFNs have reasonable expectation that their personal information given to DSHS will not be subject to government disclosure " *Id.* at 44. The trial court was "unpersuaded that some generalized constitutional right of privacy under Article I, Section 7 attaches to the names and addresses of

the individuals." RP 01/09/15 at 39. The trial court is correct. Article I, Section 7 does not prohibit disclosure of otherwise disclosable public records containing the information of taxpayer-funded child care providers.

The Washington Constitution provides that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." WA. CONST. ART. I § 7. This Court has

> recognized two types of interests protected by the right to privacy [under Article I, § 7]: the right to autonomous decisionmaking and the right to nondisclosure of *intimate* personal information, or confidentiality. In questions involving the latter right, the state constitution offers no greater protection than the federal constitution, which requires only application of a rational basis test.

Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 124, 937 P.2d 154, 167 *amended*, 943 P.2d 1358 (1997). The trial court correctly noted that no Washington authority "analyzes the interaction of the state constitutional right to privacy to the PRA." RP 01/09/15 at 35.

However, the trial court cited to persuasive authorities that address "a right to privacy that does not exist in the language of the... PRA." The Court considered *Sheehan*, 114 Wn. App at 343, which "at least tacitly agree[d] with the notion that the list of names and addresses are not generally private, absent a statute so providing." RP 01/09/15 at 36. The *Sheehan* court cited two A.L R. annotations for the proposition that

"absent such a statute so providing, lists of names and addresses are not private." *Sheehan*, 114 Wn. App at 343. 84 A.L.R. 3d 1159 states, "It would, therefore, seem that under the restatement, the mere publication of a person's address, no matter what the circumstances, could not constitute an invasion of his privacy... even though, in one case, the address possessing no news value was publicized with the expectation and apparent hope that it would bring persons to the address to molest the plaintiff and his family." The trial court correctly concluded that no "generalized right to privacy that exists would trump the PRA's mandate for disclosure." RP 01/09/15 at 39-40.

In *Ino Ino*, individuals were challenging a licensing scheme that required applicants to submit to the government his or her

> name, home address, home telephone number, date and place of birth, fingerprints taken by the Bellevue Police Department, social security number, and any stage names or nicknames used in entertaining; the name and address of each business at which the applicant intends to work; documentation that the applicant is at least eighteen years old; a complete statement of all convictions within the last five years preceding the date of the application, except for parking violations and minor traffic infractions; a description of the applicant's principal activities or services to be rendered; and a two by two inch photograph of the applicant, taken within six months of the date of application showing only the full face.

Id. at 123, n. 4. This Court concluded that "the interest in confidentiality or nondisclosure of personal information is not a fundamental right

requiring utmost protection . . ." *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 124 (1997). The court noted that the complainants "point[ed] to the 'heightened' protection of art. I, §7" but "cite[d] only cases of warrantless search and seizure in which this Court held that the State Constitution offers more protection than the Fourth Amendment." *Id.* SEIU cites similarly authorities here.

As in *Ino Ino*, a legislative enactment requires DSHS to disclose to the Foundation the FFN information contained in public records. If Art. I, § 7 applies at all, the State need only show a *rational basis* for the PRA such that it is carefully tailored to meet a legitimate governmental goal. *Ino Ino*, 132 Wn.2d at 124. This Court need look no further than the PRA's own language to justify its legitimacy. *See* RCW 42.56.030.[40] As stated *supra*, "The PRA is a strongly worded mandate for broad disclosure of public records." *Nissen v. Pierce Cnty.*, 183 Wn.2d 863, 357 P.3d 45, 52 (2015). The PRA "it is to be liberally construed to promote full access to public records, and its exemptions are to be narrowly construed." *Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997). Washington Courts

[40] "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected." RCW 42 56.030

have for decades recognized that the PRA's goal far exceeds the relatively low bar of "legitimacy." Art. I, § 7 does not nullify the PRA's mandate that the records in this case must be produced.

Second, Art. I, § 7 applies to protect an individual's private affairs only when there is no "assumed risk of disclosure *to the government*." *State v Gunwall*, 106 Wn.2d 54, 67 (1986) (emphasis added). The cases SEIU cites in its argument are cases where the *government* was *criminally prosecuting* a defendant. Additionally, they were cases where private parties were disclosing information *to the government*, often unwittingly. None of this is true in the instant case. Providers voluntarily provided information to the government to receive public funds. Providers are not being criminally prosecuted or investigated and no intrusion from government (or any party) is at risk. The government action required by, and contemplated by, Art. I, § 7 is wholly different from the instant case, where intrusion into the home or undisclosed information is *not* at stake.[41]

Third, providers in the instant case do not have a reasonable expectation of privacy, as did the defendants in SEIU's cited cases. The information of the defendants in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) and *State v. Butterworth*, 48 Wn.App. 152, 737 P.2d 1297 (1987) was possessed by a *private third party*, not the government.

[41] The party asserting the unconstitutionality of an action bears the burden of establishing that state action is involved. *City of Pasco v Shaw*, 161 Wn 2d 450, 459 (2007).

Gunwall, 106 Wn.2d at 56-57; *Butterworth*, 48 Wn.App. at 153-54. The defendants had no reason to believe the information would be disclosed to the government. Similarly, the defendant in *State v. Young*, 123 Wn.2d 173, 867 P.2d 593 (1994) never disclosed information about growing marijuana inside his home to the government. Additionally, the defendant in *Butterworth* specifically requested privacy regarding his address and telephone number. *Butterworth*, 48 Wn.App. at 157.

None of this is true in the instant case. Providers disclosed their information to the government by applying to receive *public funds* to care for children. The government itself possessed the information. Further, there is no evidence providers specifically requested privacy. However, evidence to the contrary exists. CP 476-77 at ¶ 9-10 (Declaration of Katherine Miller).

Moreover, the government may not "define the range of constitutionally protected privacy interests by manipulating the subjective expectations of citizens." *Butterworth*, 48 Wn.App at 158. Thus, it is irrelevant if agency officials told *some* but not all providers that their information would remain confidential.[42] See CP474-75 at ¶ 8 (Declaration of Irvina Mizell). "Private affairs are determined, in part, by

[42] Sporadic and non-general government assurances to individuals cannot enhance a preexisting right to privacy. *Butterworth*, 48 Wn.App. at 158. Otherwise, any government official could essentially rewrite Washington's Constitution and/or statutes by simply telling individuals their information would remain confidential.

examining the historical treatment of the interest asserted and are not based on a person's subjective expectation of privacy." *State v. Hathaway*, 161 Wn.App. 634, 642-43, 251 P.3d 253 (2011). Such information has no history of being constitutionally protected in the face of Washington's PRA. Further, for the above cited reasons, citizens are not "entitled to hold" an expectation of privacy, *id.* at 259, for information *voluntarily* disclosed *to the government* to receive *public* funds pursuant to a *public program* established by state law. Additionally, the instant public records do not reveal "intimate or discrete details of a person's life." *State v. Jordan*, 106 Wn.2d 121, 127, 156 P.3d 893 (2007).

Fourth, if Art. I, § 7 applies at all, the requested public records are disclosable because items "voluntarily expose[d] to the general public [are] not considered part of a person's private affairs." *State v. Cheatam*, 112 Wn. App. 778, 786 (2002). FFNs voluntarily submitted their names and contact information to the government, and that information is now fully disclosable under the PRA.[43]

---

[43] *Dreamgirls of Tacoma LLC v. Pierce County*, Case No. 3:14-cv-05810-RBL, Dkt 26 (W.D. Wash. 2014), does not, as SEIU hopes, change the analysis. First, the federal district court ruling did not arise under Art. I, § 7. Second, in that case, the court enjoined disclosure of public records requested under the PRA which contained exotic dancers' real names, physical descriptions, photographs, and birth dates. The court concluded that the disclosed information could be used by the specific requestor, who had prior convictions for violating anti-harassment protection orders—to discover the dancers' whereabouts where the requestor had previously been convicted of violating anti-harassment protection orders. Essentially, the dancers faced threats to their physical safety *from the requestor*. SEIU can make no showing that Freedom Foundation poses

F. FREEDOM FOUNDATION IS ENTITLED TO ATTORNEYS' FEES AND COSTS.

The Foundation is entitled to costs and fees associated with its attempt to argue against and dissolve the trial court's temporary restraining order, because under the PRA "costs and fees may be awarded where a party succeeds in getting a wrongfully issued injunction dissolved." *Spokane Police Guild v. Washington State Liquor Control Board*, 112 Wn.2d 30, 35, 769 P.2d 283 (1989). Further, "Attorney's fees are recoverable as a cost of dissolving a wrongfully issued temporary injunction or restraining order." *Seattle Firefighters Union v. Hollister*, 48 Wn.App. 129, 138, 737 P.2d 1302 (1987). Additionally, "if fees were to be awarded based on this equitable rule, they would be limited to those necessary to dissolve the temporary restraining order, not those connected with the appeal." *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 758-59, 958 P.2d 260 (1998) (citing *Seattle Firefighters*). SEIU's arguments in this case are frivolous and motivated by its pecuniary interest in collecting fees from FFNs throughout the duration of the TRO. It wrongfully obtained a TRO below and a stay on appeal. The Foundation

---

any threat to FFNs. *See* CP 338 Further, a government agency *can* discriminate among requestors when determining if production of records would violate "other statutes[s]..." RCW 42.56.080. Thus, an agency could discriminate against the requestor in *Dreamgirls* if it believed production of the requested records would result in a violation of the U.S. Constitution, which it did. However, SEIU has submitted no evidence that the Foundation's use of the records would violate the U.S Constitution.

should be compensated for its fees and costs incurred in defeating SEIU's meritless action.

V. CONCLUSION

For the foregoing reasons, this Court should uphold the trial court's decision to deny a preliminary and permanent injunction. This Court should reverse the trial court's decision with respect to 1) its issuance of a TRO based solely on CR 65(a)(2); 2) its holding that SEIU possessed standing pursuant to *Ameriquest*, 148 Wn.App. 145; or alternatively, its holding that SEIU satisfied the requirements necessary to establish associational standing to assert the interests of third party children and welfare recipients; and 3) its holding that SEIU had standing to seek an injunction under RCW 42.56.540 pursuant to the prohibition in RCW 42.56.070(9). This Court should also order the payment of the Foundation's attorneys' fees and costs below and on appeal.

RESPECTFULLY SUBMITTED this 4th day of November, 2015

FREEDOM FOUNDATION

By: _____
David M.S. Dewhirst, WSBA #48229
P.O. Box 552, Olympia, WA 98507
p. 360.956.3482
DDewhirst@myfreedomfoundation.com

FREEDOM FOUNDATION

By: _____
James G. Abernathy, WSBA #48801
P.O. Box 552, Olympia, WA 98507
p. 360.956.3482
JAbernathy@myfreedomfoundation.com

Attorneys for Cross-Appellant/Respondent Freedom Foundation

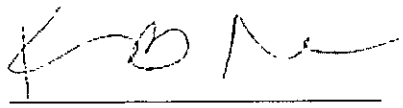
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on November 4, 2015, I filed with the Court by e-mail and I served by e-mail, pursuant to agreement, the foregoing document and this certificate of service upon:

Robert H. Lavitt
Danielle Franco-Malone
Law Offices of Schwerin Campbell
18 West Mercer Street, Suite 400
Seattle, WA 98119
lavitt@workerlaw.com
franco@workerlaw.com
woodward@workerlaw.com
schnarr@workerlaw.com

Morgan Damerow
Janette E. Sheehan
Albert Wang
Assistant Attorney General
Office of the Attorney General
7141 Cleanwater Drive SW
PO Box 40145
Olympia, WA 98504-0145
MorganD@atg.wa.gov
JanettaS@atg.wa.gov
AlbertW@atg.wa.gov

Dated this 4th day of November, 2015, at Olympia, Washington.



Kirsten Nelsen

OFFICE RECEPTIONIST, CLERK

To: Kirsten Nelsen
Cc: michele@alliedlawgroup.com; info@alliedlawgroup.com, James Abernathy, David Dewhirst; Stephanie Olson; Nick Dagostino, wendyk2@atg.wa.gov, morganD@atg.wa gov, janettaS@atg.wa.gov; albertw@atg.wa.gov, JaneC@atg.wa gov; LPDarbitration@atg.wa.gov, lavitt@workerlaw.com; franco@workerlaw.com; schnarr@workerlaw com; woodward@workerlaw com
Subject: RE: No 91715-9 Respondent/Cross-Appellant Freedom Foundation's Opening Brief

Received on 11-04-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kirsten Nelsen [mailto:KNelsen@myfreedomfoundation.com]
Sent: Wednesday, November 04, 2015 1:01 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: michele@alliedlawgroup.com; info@alliedlawgroup.com; James Abernathy <jabernathy@myfreedomfoundation.com>; David Dewhirst <DDewhirst@myfreedomfoundation.com>, Kirsten Nelsen <KNelsen@myfreedomfoundation.com>; Stephanie Olson <SOlson@myfreedomfoundation com>; Nick Dagostino <ndagostino@myfreedomfoundation.com>; wendyk2@atg.wa.gov; morganD@atg.wa.gov; janettaS@atg.wa.gov; albertw@atg.wa.gov; JaneC@atg.wa.gov; LPDarbitration@atg.wa.gov; lavitt@workerlaw.com; franco@workerlaw.com; schnarr@workerlaw.com; woodward@workerlaw.com
Subject: No. 91715-9 Respondent/Cross-Appellant Freedom Foundation's Opening Brief

Good Afternoon,

Please find attached for filing today in Case No. 91715-9 Respondent/Cross-Appellant Freedom Foundation's Opening Brief. Please contact me immediately if you have any difficulties opening the attachment.

Please include for all future e-service Freedom Foundation attorney, Nick Dagostino. His e-mail address is ndagostino@myfreedomfoundation.com.

Thank you,

Kirsten Nelsen
Paralegal | Freedom Foundation

knelsen@myFreedomFoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com