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STATE OF WASHINGTON
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No. 89462-1

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SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT UTTER and FAITH IRELAND in the name of the STATE OF
WASHINGTON

Petitioners,

vs.

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Respondent.

PETITIONER'S STATEMENT OF ADDITIONAL
AUTHORITIES (RAP 10.8)

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 ORIGINAL

Pursuant to RAP 10.8, Petitioners Robert Utter and Faith Ireland identify the following additional authorities:

Initiative 276 Section 36(5) (1972) (attached) (granting authority for Public Disclosure Commission to receive and investigate complaints).

Initiative 276 Section 40(4) (1972) (attached) (granting authority for any person to bring citizen action if attorney general does not commence an action within notice period).

International Ass'n of Fire Fighters Local 46 v. Everett 146 Wn.2d 29, 40 (Wash. 2002) (2006) (defining "action" as a judicial proceeding: "*Black's Law Dictionary* defines 'action' as a 'civil or criminal judicial proceeding,' 'an ordinary proceeding in a court of justice,' and 'any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree.' BLACK'S LAW DICTIONARY 28-29 (7th ed. 1999). American jurisprudence defines 'action' as 'a judicial proceeding in which one asserts a right or seeks redress for a wrong.' 1 AM. JUR. 2D *Actions* § 4, at 725-26 (1994). As discussed above, this court has held that 'arbitration' may be judicial in nature depending on the circumstances. Thus, nothing in the 'plain language' of 'action' prevents us from interpreting it to include arbitration proceedings.") (internal citations omitted).

Thorgaard Plumbing & Heating Co. v. King County, 71 Wn.2d 126, 130 (Wash. 1967) ("It is clear that by using the word 'action' in the foregoing section the legislature had a lawsuit in mind.")

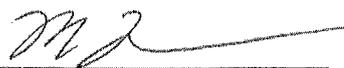
Dice v. City of Montesano, 131 Wn.App. 675, 692 (2006) (relying upon *International Ass'n of Fire Fighters Local 46, supra*, to hold that settlement negotiations are not judicial proceedings and therefore are not "actions.")

Windt v. Banniza, 2 Wash. 147, 150 (1891) ("an attachment proceeding is not an action, but only a proceeding ancillary to an action")

Respectfully submitted this 23rd day of May, 2014.

SMITH & LOWNEY, PLLC

LAW OFFICES OF MICHAEL W.
WITHEY

By: 

By: _____

Knoll D. Lowney
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Marc Zemel
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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on May 23, 2014, I caused the PETITIONERS' STATEMENT OF ADDITIONAL AUTHORITIES to be served in the above-captioned matter upon the parties herein via by United State mail, postage prepaid, and electronic mail:

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Stated under oath this 23d day of May, 2014.

Jessie C. Sherwood

EXHIBIT 1

SECTION 4. That all Washington State retailers holding a Class E license to sell beer at retail or those Washington State retailers holding a Class F license to sell wine at retail, excepting those Class E and Class F license holders who are allowed to sell beer or wine for on-premises consumption, will be allowed to sell intoxicating liquor at retail if they comply with the licensing requirement of Section 3 hereof, and further that the legislature of the State of Washington is hereby empowered to establish licensing requirements for retail stores which will sell as their primary business beer, wine and liquor at retail.

SECTION 5. That Washington State is prohibited from the reselling of any liquor, either at retail or wholesale.

SECTION 6. That the provisions of this initiative shall become effective July 1, 1973.

SECTION 7. That the Washington State Legislature may pass such laws or resolutions implementing this initiative as may be desirable or necessary to effectuate its purpose.

EXPLANATORY COMMENT

Initiative Measure No. 261 filed in the office of the Secretary of State as of January 11, 1972.

Sponsor filed 122,241 supporting signatures as of January 11, 1972.

Signatures found sufficient. Measure then certified to the November 7, 1972 state general election for approval or rejection by the voters.

COMPLETE TEXT OF

Initiative Measure 276

Ballot Title as issued by the Attorney General:

Disclosure—Campaign Finances—Lobbying—Records

AN ACT relating to campaign financing, activities of lobbyists, access to public records, and financial affairs of elective officers and candidates; requiring disclosure of sources of campaign contributions, objects of campaign expenditures, and amounts thereof; limiting campaign expenditures; regulating the activities of lobbyists and requiring reports of their expenditures; restricting use of public funds to influence legislative decisions; governing access to public records; specifying the manner in which public agencies will maintain such records; requiring disclosure of elective officials' and candidates' financial interests and activities; establishing a public disclosure commission to administer the act; and providing civil penalties.

**BE IT ENACTED, by the people
of the State of Washington:**

SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be the public policy of the State of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

SECTION 2. DEFINITIONS. (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, public official, department, division, bureau, board, commission or other state agency. "Local agency" includes every county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by R.C.W. 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of any specific constituency which has been filed with the appropriate election officer of that constituency.

(3) "Campaign depository" means a bank designated by a candidate or political committee pursuant to section 5 of this act.

(4) "Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political

appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. The original members shall be appointed within sixty days after the effective date of this act. The term of each member shall be five years except that the original five members shall serve initial terms of one, two, three, four and five years, respectively, as designated by the governor. No member of the commission, during his tenure, shall (1) hold or campaign for elective office; (2) be an officer of any political party or political committee; (3) permit his name to be used, or make contributions, in support of or in opposition to any candidate or proposition; (4) participate in any way in any election campaign; or (5) lobby or employ or assist a lobbyist. No member shall be eligible for appointment to more than one full term. A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission. Three members of the commission shall constitute a quorum. The commission shall elect its own chairman and adopt its own rules of procedure in the manner provided in chapter 34.04 R.C.W. Any member of the commission may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

Members shall serve without compensation, but shall be reimbursed for necessary traveling and lodging expenses actually incurred while engaged in the business of the commission as provided in chapter 43.03 R.C.W.

SECTION 36. Commission—Duties. The commission shall:

- (1) Develop and provide forms for the reports and statements required to be made under this act;
- (2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this act;
- (3) Compile and maintain a current list of all filed reports and statements;
- (4) Investigate whether properly completed statements and reports have been filed within the times required by this act;
- (5) Upon complaint or upon its own motion, investigate and report apparent violations of this act to the appropriate law enforcement authorities;
- (6) Prepare and publish an annual report to the governor as to the effectiveness of this act and its enforcement by appropriate law enforcement authorities; and
- (7) Enforce this act according to the powers granted it by law.

SECTION 37. Commission—Additional Powers. The commission is empowered to:

- (1) Adopt, promulgate, amend and rescind suitable administrative rules and regulations to carry out the policies and purposes of this act;
- (2) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this act, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this act;
- (3) Make from time to time, on its own motion, audits and field investigations;
- (4) Make public the fact that an alleged or apparent violation has occurred and the nature thereof;
- (5) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memorandums or other records which the commission deems relevant or material for the purpose of any investigation authorized under this act, or any other proceeding under this act;

(6) Adopt and promulgate a Code of Fair Campaign Practices;

(7) Relieve, by published regulation of general applicability, candidates or political committees of obligations to comply with the provisions of this act relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than one thousand dollars; and

(8) Enact regulations prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities and other municipalities and political subdivisions in preparing, publishing and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports and other materials prepared, published or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his regular examination of each agency under chapter 43.09 R.C.W. shall review such regulations, accounts and reports and make appropriate findings, comments and recommendations in his examination reports concerning those agencies.

(9) The commission, after hearing, by order may suspend or modify any of the reporting requirements hereunder in a particular case if it finds that literal application of this act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required hereunder. Any citizen shall have standing to bring an action in Thurston County Superior Court to contest the propriety of any order entered hereunder within one year from the date of entry of such order.

SECTION 38. Secretary of State, Attorney General—Duties.

(1) The secretary of state, through his office, shall perform such ministerial functions as may be necessary to enable the commission to carry out its responsibilities under this act. The office of the secretary of state shall be designated as the place where the public may file papers or correspond with the commission and receive any form or instruction from the commission.

(2) The attorney general, through his office, shall supply such assistance as the commission may require in order to carry out its responsibilities under this act. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this section.

SECTION 39. Civil Remedies and Sanctions. (1) One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this act by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this act, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying: PROVIDED, however, that imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this act.

(c) Any person who violates any of the provisions of this act may be subject to a civil penalty of not more than ten thousand dollars for each such violation.

(d) Any person who fails to file a properly completed statement or report within the time required by this act may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(e) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

(f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

SECTION 40. Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in Section 39.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this act, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective state-wide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general in writing that there is reason to believe that some provision of this act is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this act if the attorney general has failed to commence an action hereunder within forty days after such notice and if the attorney general has failed to commence an action within ten days after a notice in writing delivered to the attorney general advising him that a citizen's action will be brought if the attorney general does not bring an action. If the person who brings the citizen's action prevails, he shall be entitled to one-half of any judgment awarded, and to the extent the costs and attorney's fees he has incurred exceed his share of the judgment, he shall be entitled to be reimbursed for such costs and fees by the State of Washington: PROVIDED, that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the

person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or treble damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the State of Washington.

SECTION 41. Limitation on Actions. Any action brought under the provisions of this act must be commenced within six years after the date when the violation occurred.

SECTION 42. Date of Mailing Deemed Date of Receipt. When any application, report, statement, notice, or payment required to be made under the provisions of this act has been deposited post-paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing.

SECTION 43. Certification of Reports. Every report and statement required to be filed under this act shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

SECTION 44. Statements and Reports Public Records. All statements and reports filed under this act shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

SECTION 45. Duty to Preserve Statements and Reports. Persons with whom statements or reports or copies of statements or reports are required to be filed under this act shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years.

SECTION 46. Severability. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

SECTION 47. Construction. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

SECTION 48. Chapter and Section Headings Not Part of Law. Chapter and section captions or headings as used in this act do not constitute any part of the law.

SECTION 49. Effective Date. The effective date of this act shall be January 1, 1973.

SECTION 50. Repeals. Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965 ex. sess., and R.C.W. 29.18.140; and chapter 131, Laws of 1967 ex. sess., and R.C.W. 44.64; and chapter 82, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 24; and chapter 98, Laws of

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 23, 2014 3:22 PM
To: 'Jessie Sherwood'
Cc: Knoll Lowney
Subject: RE: Utter v. BIAW, no. 89462-1

Rec'd 5-23-14

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: Jessie Sherwood [mailto:jessie.c.sherwood@gmail.com]
Sent: Friday, May 23, 2014 3:15 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Knoll Lowney
Subject: Utter v. BIAW, no. 89462-1

Good afternoon. Please find attached the Petitioner's Statement of Additional Authorities for filing in Robert Utter and Faith Ireland in the name of the State of Washington v. Building Industry Association of Washington, Case number 89462-1, on behalf of Knoll Lowney, WSBA 23457 (knoll@igc.org), 2317 E. John, Seattle, WA 98112.

Yours very truly,

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