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CONSOLIDATED CASE NO. 97109-9

SUPREME COURT OF THE STATE OF WASHINGTON

FREEDOM FOUNDATION,
Petitioner,

v.

TEAMSTERS LOCAL 117 SEGREGATED FUND, et al.,
Respondent/Cross-Appellant.

FREEDOM FOUNDATION,
Petitioner/Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL
EDUCATION AND ACTION FUND,
Respondent/Defendant.

FREEDOM FOUNDATION,
Petitioner/Plaintiff,

v.

JAY INSLEE, et al.,
Respondents/Defendants

SERVICE EMPLOYEES INTERNATIONAL UNION 775,
Respondent/Necessary Party.

**SERVICE EMPLOYEES INTERNATIONAL UNION 775'S
ANSWERING BRIEF**

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INTRODUCTION

Service Employees International Union 775 (SEIU 775) joins the analysis of the Fair Campaign Practices Act's (FCPA) citizen's action provision, RCW 42.17A.765(4) (2012), submitted in this consolidated appeal by the Services Employees International Union Political Education and Action Fund (PEAF).¹ Applying that analysis in this case, the Freedom Foundation (Foundation) did not file its citizen's action until a year and a half after the filing window closed. The trial court thus properly dismissed the Foundation's claims.

ASSIGNMENTS OF ERROR

SEIU 775 does not assign error to the trial court's ruling. It contends that the trial court correctly dismissed the Foundation's action for failure to comply with RCW 42.17A.765(4)(a)'s prerequisites.

STATEMENT OF THE CASE

I. The parties

SEIU 775 is a labor union that represents more than 45,000 long-term care workers in Washington and Montana. SEIU 775 asks its members to voluntarily contribute to the Committee on Political Education (COPE), a separate segregated fund under 26 U.S.C. § 527(f)(3), operated by SEIU 775's parent organization, the Service Employees International

¹ Unless otherwise noted, all references to the FCPA are to the version in effect in 2012.

Union (SEIU). CP 2, 10-11. SEIU 775 obtains members' authorization to contribute to COPE via signed cards. CP 11. These cards authorize SEIU 775 members' employers to deduct contributions from their paychecks and transmit them to COPE. *Id.*

The Department of Social and Health Services (DSHS) is a Washington agency that employs SEIU 775 bargaining unit members who provide in-home personal care services as Individual Providers (IPs). CP 10–11. Governor Inslee serves as the IPs' employer for the purposes of collective bargaining. CP 2, 10. DSHS and SEIU 775 are parties to a collective bargaining agreement under which DSHS deducts and transmits to SEIU 775 voluntary contributions deducted from the wages of IPs who have signed authorization cards. CP 11–13. SEIU 775 in turn transmits those amounts to COPE. CP 13.

The Foundation is a Washington nonprofit organization. CP 2.

II. The Foundation notified the public officials of its FCPA claims against DSHS and Governor Inslee, the public officials declined to pursue them, and the Foundation then initiated an untimely citizen suit.²

On September 30, 2016, the Foundation issued its first notice to Attorney General and relevant prosecuting attorneys (collectively, public officials), setting forth its belief that DSHS and Governor Inslee

² Because the trial court dismissed this action under CR 12(c), these facts are drawn from the Foundation's complaint, which SEIU 775 accepts as true only for purposes of adjudicating this appeal.

(collectively, State Defendants) were violating RCW 42.17A.495(3) by deducting contributions from IPs' wages pursuant to a payroll deduction plan without first obtaining the individual providers' signatures on authorization forms specifically prescribed by the PDC. CP 1-2, 5. The public officials did not commence an action within 45 days of that notice—i.e., by Monday November 14, 2016. CP 2.

The Foundation issued a second notice on November 18, 2016, advising the public officials that it would bring an action against the State Defendants if the public officials failed to bring an action within 10 days of receipt of this notice. CP 1-2, 5. That letter triggered a 10-day period—i.e., until November 28, 2016—for the officials to commence an action if they wanted to foreclose the Foundation from doing so. RCW 42.17A.765(4)(a)(iii). If the officials failed to do so within that period, the Foundation then had 10 days from that failure—i.e., until December 8, 2016—to commence a citizen's action under Section 765. RCW 42.17A.765(4)(a)(ii).

The public officials did not commence an enforcement action. CP 2. The Foundation filed this citizen's action on June 6, 2018, approximately 18 months after the deadline to do so had expired. CP 1-8. The Foundation joined SEIU 775 as a "necessary party" to the litigation, pursuant to CR 19. CP 2.

III. The trial court dismissed the Foundation's citizen suit as untimely.

On April 5, 2019, SEIU 775 moved for judgment on the pleadings because the Foundation had not complied with Section 765's preconditions for bringing a citizen's action. CP 16–69. The State Defendants joined SEIU 775's motion. CP 482–84.³

On June 28, 2019, the trial court heard the motion, and dismissed the action for failure to comply with Section 765. CP 545-47; RP 30:10–33:2 (06/28/19) (finding SEIU 775's and the State Defendants' reading of Section 765 more persuasive).

On July 1, 2019, the Foundation sought direct review of the dismissal order. CP 541–47. On September 4, 2019, this Court accepted direct review and consolidated the appeal with Case Nos. 97109-9 and 97111-1.

ARGUMENT

I. Because the Foundation did not file this suit within 10 days of the officials' failure to act on its second notice, the trial court correctly dismissed this action.

As PEAFF explained in its separate brief, (1) the plain language of

³ On May 24, 2019, while SEIU 775's motion was pending, the Foundation propounded wide ranging discovery requests on SEIU 775. CP 489–525. The majority of the requests were exactly or substantially identical to those served on Teamsters Local Union No. 117 in an unrelated matter involving entirely different kinds of FCPA claims. *See* Brief of Local 117 at 12 n.6. In fact, so similar were the two sets of discovery requests that the definition section of the set served on SEIU 775 defined “you” as “Teamsters Local Union No. 117.” CP 493.

Section 765(4)(a)(ii) specifically requires complainants to notify public officials in their second FCPA notice that the complainant will file a citizen's action within 10 days of the official's failure to file an FCPA action, and (2) to gain entitlement to bring a citizen's action, a complainant must actually do what he or she is required to say—otherwise, as a matter of statutory interpretation, waiver, and forfeiture, the complainant loses the statutory privilege of bringing the citizen's action.

Applying that analysis here, the Foundation had until December 8, 2016, to file this action but did not do so until June 6, 2018, approximately a year and a half later. *Supra* at 3. The Foundation thus did not satisfy the statutory prerequisites to bringing a citizen's action and the trial court correctly dismissed the case.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the separate answering brief filed by PEAFF, SEIU 775 respectfully asks the Court to affirm the judgment on the pleadings dismissing the Foundation's citizen's action for failure to comply with Section 765's prerequisites.

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Respectfully submitted this 6th day of November, 2019.

A handwritten signature in black ink, reading "Darin M. Dalmat". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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DECLARATION OF SERVICE

I, Jennifer Woodward, declare under penalty of perjury in accordance with the laws of the State of Washington that the original of the preceding document with the Washington State Supreme Court using the appellate efileing system, which will provide notice of such filing to all required parties.

Executed this 6th day of November, 2019, at Seattle, Washington.


Jennifer Woodward, Paralegal

BARNARD IGLITZIN & LAVITT

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