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NO. 100386-2

**SUPREME COURT
OF THE STATE OF WASHINGTON**

ROGER TODD BUCKNER,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

No issue of substantial public interest is posed by the routine application of the principles governing the plain language of a statute, and this Court need not grant review to consider constitutional arguments unsupported by any authority.

RCW 19.28.131 provides that the Department mails a citation for performing illegal electrical work to the contractor's last known address. Roger Buckner offers an interpretation of this statute that would require not just a reliable determination of a party's last known address, but also some unspecified additional verification procedure. This interpretation contravenes the plain words of the statute and undermines the statute's purpose of protecting the public from unsafe electrical work.

Buckner's argument that he was deprived of due process similarly fails to warrant review. Buckner does not support his claim that the Department's method was not reasonably calculated to lead to actual service, and he downplays the fact that he in fact received the citation for which he complains of a lack

of due process. It was Buckner’s burden to prove that the Department’s use of Accurint—a reliable commercial data service that uses current and past public records to verify identities and addresses—was not reasonably calculated to reach him, not the Department’s burden to prove that Accurint is infallible. Only “serious questions of constitutional law” warrant this Court’s review, not assertions backed by neither legal authority nor evidence.

The petition for review should be denied.

II. ISSUE

RCW 19.28.131 requires the Department to send a citation to a violator’s last known address. Did the Department comply with RCW 19.28.131 and due process when it sent its citations to the address it obtained through Accurint—a commercial database service—and when this was the correct address?

III. STATEMENT OF THE CASE

A. Overview of Electrical Law

Department inspectors enforce electrical laws to protect the public and workers from dangerous electrical installations and to protect consumers from unscrupulous contractors. *See*

Nat'l Elec. Contractors Ass'n, Cascade Chapter v. Riveland, 138 Wn.2d 9, 17, 21-22, 978 P.2d 481 (1999). The electrical law's purpose is to protect the public from unsafe electrical work. *See Nat'l Elec. Contractors*, 138 Wn.2d at 16-17.

RCW 19.28.131 directly furthers that purpose as it allows the Department to cite contractors so that they correct their unsafe and illegal behavior.

Electrical work must be done in "strict conformity" with electrical laws, which exist to promote "safety to life and property." RCW 19.28.010(1); *see also* RCW 19.28.031.

Because of this, electricians must comply with rigorous training and examination requirements. *See* RCW 19.28.161, .191, .201, .205.

A contractor that performs electrical work must have a valid electrical contractor's license and certificate of competency. RCW 19.28.041(1), .191. A valid electrical license allows a person or company to advertise that they perform electrical work, bid on electrical work, and perform electrical

work (provided they are properly certified to do so).

RCW 19.28.041. Applicants for electrical contractor's licenses must list their addresses. RCW 19.28.041(1)(a); WAC 296-46B-925(1); WAC 296-46B-940(5).

The Legislature directed the Department to take the necessary action to implement and enforce electrical laws.

RCW 19.28.251. Inspectors inspect worksites to ensure proper licensing, certification, permitting, and proper and safe electrical installations. WAC 296-46B-980. The Department may issue electrical citations to persons violating electrical laws, including failing to be licensed and certified.

RCW 19.28.131, .271(2).

A person can appeal an electrical citation by filing it “within twenty days after notice of the penalty is given” to them at their “last known address,” delivered by a method that can be tracked. RCW 19.28.131; *see* WAC 296-46B-995(12)(b).

B. The Department Issued Buckner Two Electrical Citations Through Certified Mail, Which Buckner Received

The Department cited Buckner for failing to have an electrical contractor's license and for failing to have an electrician's certificate of competency when performing electrical work, violating RCW 19.28.161 and RCW 19.28.041.

AR 7-12. The citations carried a total penalty of \$1,250.

AR 7-12. The notices the Department sent informed Buckner that he had 20 days to appeal. AR 8, 11.

The Department obtained Buckner's mailing address by using Accurint, a subscription service that uses current public records to verify identities, which the Department regularly uses in its inspections process. CP 82. The Department used Accurint because Buckner had not provided his address to the Department because he failed to register as a contractor, apply for an electrical license, or become certified as an electrician. CP 82. Although the inspector statement states, "I found two SS#s for Mr. Buckner," CP 84, Accurint showed just one

current address for Buckner since 2008: 7683 SE 27th Street, Apt #414, Mercer Island, WA 98040. CP 82. Nothing in the record indicates the extra social security number corresponds to a living person.

The SE 27th Street address is to a UPS Store mailbox that Buckner has used for over a decade. CP 40. The U.S. Postal Service delivered the citations on November 12, 2019, by certified mail. AR 18. Buckner admits he personally received the citations. CP 41.

Twenty days from November 12, 2019—when the citations were received at his last known address—was December 2, 2019. Buckner did not file an appeal by this date. Instead, Buckner delivered his appeal to the Department's Bellevue service location on December 5, 2019, on the 23rd day. This was 20 days from November 15, 2019—when Buckner retrieved the citations from his mailbox. CP 41.

C. The Department Did Not Misinform Buckner of His Appeal Due Date

Buckner contacted the Department inspector who conducted the citation's inspection, Joaquin Perez, by email and phone on November 19, 2019. AR 14, 41. Inspector Perez informed Buckner that he needed to contact the Electrical Section, not Perez personally, to respond to the citations, and Perez gave Buckner the phone number to call for more information. AR 13-14.

The Department's records do not show that a Department employee ever told Buckner a deadline by which he must appeal the citation, other than the information in the notice itself. Electrical citations desk staff document conversations with violators. CP 81-82. The Department's records do not show that Buckner contacted the electrical appeals citation desk and thus contradict Buckner's allegations that he spoke with Perez and "the electrical citations desk" and that they both "confirmed" that his appeal was due December 5, 2019. CP 41, 81-82.

Buckner sent Perez an email about the citation, asking about how he could file his appeal. CP 64-65. Buckner's email stated that he "informed" Perez that it was his "understanding that [he] had 20 days to file an appeal . . . commencing the 20 day count on the 15th of November, 2019." CP 65. Buckner stated, "It was my understanding that you agreed with me." CP 65.

Perez responded in a reply email, explaining that Buckner needed "to address this according to the instructions sent out with the infractions" and that the "Electrical Section at L & I" was the entity he needed to contact. CP 46. Perez works in the Construction Compliance Section, not the Electrical Section. CP 46. Buckner asked for a phone number and email address for the Electrical Section, and Perez provided a phone

number, but said that the Electrical Section does not have an email address Buckner can use to contact them. CP 63-64.¹

Buckner dropped off his appeal at the Bellevue service location on December 5, 2019. CP 55, 81. The Bellevue service location copied and emailed the documents to the electrical citations desk, which gave them to the office of the Chief Electrical Inspector on December 6, 2019. CP 81-82. Three pages of the appeal were inadvertently left out. CP 82.

D. The Department Denied Buckner’s Appeal as Untimely and the Superior Court Affirmed

The Department denied Buckner’s appeal because it received the appeal after more than 20 days. AR 3. Buckner appealed the denial to superior court. CP 1-2. Buckner’s superior court notice of appeal listed his address as 7683 SE

¹ Buckner alleges that the electrical citations desk has an email address (electricalcitations@lni.wa.gov). Pet. 5. But that address is not contained in the record except as argument in Buckner’s Motion for Reconsideration or for Evidentiary Hearing. CP 145. Nothing in the record indicates whether this email address is regularly monitored or who monitors it.

27th Street, #414, Mercer Island, WA 98040—the same address to which the Department sent the citations. CP 3.

The superior court found Buckner’s appeal untimely. CP 130-34. It found the citations were mailed to Buckner’s last known address. CP 130-31 (FF 1.2). The court also found that in the process of transmitting Buckner’s appeal from the Bellevue service location where he delivered it to the Chief Electrical Inspector’s office “three pages of the documents accompanying the appeal were inadvertently and unintentionally misplaced so that they were not included in the Certified Agency Record though they are included in the briefing.” CP 131 (FF 1.7).

The superior court concluded the Department met RCW 19.28.131’s notice requirement when it sent the citations to Buckner “by certified mail at his last known address and it was received and signed for at his UPS mailbox.” CP 132 (CL 2.2). It concluded the “appeal was late because it was not received by the Chief Electrical Inspector within the 20 days

from the date Mr. Buckner was notified of the citations,” “there were no due process violations,” and Buckner had no right to attorney fees. CP 132 (CL 2.4, 2.5, 2.6).

Buckner appealed to the Court of Appeals. CP 161-62. The Court of Appeals affirmed the superior court in an unpublished decision, rejecting Buckner’s argument that the Department could not use Accurint to determine Buckner’s “last known address” and Buckner’s argument that the Department violated his right to due process. *Buckner v. Dep’t of Labor & Indus.*, No. 82155-5-I (slip op.) (Wash. Ct. App., October 11, 2021).

Buckner then filed a petition for review with this Court.

IV. ARGUMENT

Buckner establishes neither an issue of substantial public interest nor a significant question of constitutional law. Rather, he seeks a rule of law that would frustrate the electrical laws’ purpose. Buckner argues that not only must the Department determine the party’s last known address, it also has to “first

verify[] the address” from Accurint. Pet. 8-9. But nothing in RCW 19.28.131 requires the Department to conduct this additional and unnecessary step. Instead, RCW 19.28.131 allows the Department to use an individual’s last known address when the Department has no address for an individual in its files. And the use of Accurint to accomplish this is reasonably calculated to lead to actual notice—which is reinforced by the fact that Buckner actually received the citations through the address supplied by Accurint—so Buckner shows no violation of due process. This Court should deny Buckner’s petition for review.

A. No Issue of Substantial Public Interest Is Presented by Whether the Department Can Use Accurint To Determine Where To Mail an Electrical Citation

The routine application of the plain language of a statute to the record does not present an issue of substantial public interest. Here, the plain language of RCW 19.28.131 shows that there is no requirement that the last known address be

“verified” beyond the initial, reliable determination of last known address.

Buckner failed to timely appeal the Department’s citations and the Department properly denied his appeals. The Department must send notice of electrical citations to the cited entity’s last known address:

The department shall notify the person . . . violating [certain electrical laws] . . . of the amount of the penalty and of the specific violation using a method by which the mailing can be tracked or the delivery can be confirmed sent to the last known address of the assessed party.

RCW 19.28.131. Cited entities then have twenty days to appeal:

The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department.

RCW 19.28.131.

Buckner asks that this Court ignore the plain language of the statute. By using the language “sent to the last known address,” the statute means the last known address from the

Department’s perspective. This means the information that the Department could obtain about the contractor. The Legislature had to have contemplated that the Department would not have received addresses from unregistered electrical contractors and that some contractors might not be forthcoming with an inspector about how best to serve them with citations. And accepting Buckner’s theory would thwart the statute’s purpose, making it substantially more difficult for the Department to cite individuals engaging in impermissible electrical work.

The statute’s plain language provides no limitation that the “last known address” be verified, whether by the person being cited or some other source. Such an interpretation would add words to the statute, which the court does not do. *See City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013).²

² Buckner’s argument also fails because the dictionary defines the adjective “known” as “generally recognized.” *Known*, MERRIAM-WEBSTER DICTIONARY.COM. <https://www.merriam-webster.com/dictionary/known> (last visited April 15, 2021). Buckner fails to show how Accurint, which uses public records to compile contact information for subscribers to purchase, contains no “generally recognized” address. *See* CP 82.

And Buckner's interpretation of RCW 19.28.131 also goes against the Legislature's purpose in adopting laws that protect against improper and dangerous electrical installations. Buckner shows no issue of substantial public interest and his petition should be denied.

B. Buckner Shows No Significant Constitutional Question When He Raises an Inchoate Due Process Argument

Buckner does not show a significant question of law under the constitution. *See* Pet. 9-11. Buckner claims he did not have adequate notice for due process purposes, but he received the notice at the address that was provided by Accurint, and the address listed in his notice of appeal was the same as the address Accurint retrieved.

Due process provides notice and an opportunity to be heard. *City of Redmond v. Moore*, 151 Wn.2d 664, 680, 91 P.3d 875 (2004). There must be “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present

their objections.” *State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)).

Here, notice was calculated to reach Buckner and it indeed did reach him, and it stated his appeal rights, so the “constitutional requirements are satisfied.” *See id.* (quoting *Mullane*, 339 U.S. at 314-15). Looking for a last known address in a public records data compiler database is an acceptable method to serve unlicensed contractors because it is a method designed to reach them and afford them an opportunity to contest the citations. Buckner fails to provide any authority for the position that the Department cannot use a service like Accurint to identify an unregistered contractor’s address (*See Pet. 9-11*), and the case law supports using such a service. *See Rogers*, 127 Wn.2d at 279 (actual delivery of a notice is not required so long as the notice was reasonably calculated to reach recipient); *State v. Whitney*, 78 Wn. App. 506, 510-13, 897 P.2d 374 (1995)

(mailing a notice using the address on a drivers' license provides adequate due process).

Here, actual notice was provided, so it is difficult to see what there is to complain about. At most Buckner shows that if he had not received notice he might have some reason to complain.

Buckner argues without evidence that the use of Accurint was not reliable and that the Department could not rely on Accurint without verifying his information. Pet. 9-11. But first, as the party challenging the constitutionality of the Department's actions, Buckner has to prove that the agency acted unconstitutionally beyond a reasonable doubt. *See Sch. Dists. Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605-08, 244 P.3d 1 (2010). Buckner has offered no evidence supporting his claim that Accurint is unreliable so he has not met that burden.

Second, the information that is in the record indicates that Accurint is reliable, given that it in fact produced the

correct address for Buckner. Furthermore, Accurint is a service that the Department and other public and private agencies have used to identify addresses for some time, which supports the inference that its use is reasonable, at least in the absence of any evidence of it producing incorrect addresses.

Under *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), weighing the factors shows that the notice given was constitutional; the factors considered are:

(1) the private interest that will be affected by the official action;

(2) the risk of erroneously depriving a person of that interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

(3) the State's interest, including the function involved and fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The first factor favors the Department, as Buckner's interest is a financial one rather than a fundamental liberty interest. See *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 70, 331 P.3d 1147 (2014) (explaining that when a party's interest is "purely financial" then "the level of due

process that is constitutionally required, though real, is on the low end of the spectrum.”)

The second *Mathews* factor also favors the Department. It considers “the risk of erroneous deprivation of the interest at stake through the procedures used and the probable value, if any, of additional or substitute safeguards.” *City of Bellevue v. Lee*, 166 Wn.2d 581, 586, 210 P.3d 1011 (2009) (quotations omitted) As *Lee*’s discussion shows, the party challenging the sufficiency of the current procedures bears the burden of proving that they are unreliable. *Lee*, 166 Wn.2d at 587. *Lee* rejected the argument that the procedures used for the revocation of a driver’s license were insufficient, noting that the challengers to the law had not shown that the alleged errors that could be caused by the current system were “widespread” or that the errors would be impossible to resolve, and the court noted that they had not cited “even one example” of such an error. *Id.* Buckner similarly complains that Accurint is not reliable but does not cite an example of Accurint leading the Department to mail a citation to the wrong address.

In any event, using public records to find the last known address is reasonable because these would be addresses that the contractor is known to have used to receive mail. And in cases like the current one, where the person performing contractor work without a license never registered with the Department, using a service like Accurant to discover the individual's mailing address is a reasonably reliable method that the Department has available to it. Nothing dictates any other method.³

The final *Mathews* factor also favors the Department. It is the government's interest "in the fiscal and administrative burden that additional or substitute procedural requirements would entail." *Lee*, 166 Wn.2d at 589. Just as the state has an "interest in the efficient and cost effective administration" of the licensing laws at issue in *Lee*, the state has an interest in the efficient and

³ Buckner complains that the Department should have verified the address with him as it did with another contractor, V & S Construction LLC. Pet. 8-11. The Department cited V & S for allowing Buckner to use its contractor's registration. CP 84. But nothing requires a Department inspector to call a violator about the violator's address.

cost-effective administration of the electrical laws. Buckner does not show otherwise.

In any event, the government's interest in protecting "life and property" (RCW 19.28.010) through its electrical laws is strong. Requiring the Department to obtain something more than the last known address from someone working illegally before it can issue citations to that person would impose an unreasonable administrative burden and frustrate enforcement of these laws.⁴

On balance, the *Mathews* factors weigh in favor of finding that Buckner received all the process that was due. Not only is Buckner's constitutional argument not significant, it lacks merit, and does not warrant review.

⁴ Buckner notes that WAC 296-46B-995 allows the Department to either mail a citation to a person's last known address or personally serve them, and claims that this shows the Department did not follow its own regulations when it mailed the citation to Buckner. Pet. 11. But this argument does not make sense given that the rule Buckner cites allows for the mailing of the citation. In any event Buckner shows no violation of due process.

V. CONCLUSION

For the foregoing reasons, the petition for review should be denied.

This document contains 3,491 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of February, 2022.

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The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I served the Department's Answer to Petition for Review and this Declaration of Service in the below described manner:

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