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NO. 95420-8
(Consolidated with No. 95436-4)

SUPREME COURT OF THE STATE OF WASHINGTON

FEDERAL HOME LOAN BANK OF SEATTLE,

Appellant,

v.

CREDIT SUISSE SECURITIES (USA) LLC, et al.,

Respondents

FEDERAL HOME LOAN BANK OF SEATTLE,

Appellant,

v.

BARCLAYS CAPITAL, INC., et al.,

Respondents.

**BRIEF OF AMICUS CURIAE WASHINGTON STATE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

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I. INTRODUCTION

A private cause of action under the Washington Securities Act may proceed with proof of a violation of RCW 21.20.010(2), which requires only a showing of a material misrepresentation or omission in connection with the offer, sale or purchase of a security. Washington's Securities Act was modeled on the Uniform Securities Act, and neither the Washington Act nor the Uniform Act includes or implies a reliance requirement. Injecting a reliance element such as that found in federal law into the Washington Securities Act contravenes the plain language of the statute and Legislative intent to protect persons from fraudulent or misleading conduct in securities transactions.

Relying on dicta from this Court, Division One erroneously attempted to harmonize Washington law with Securities and Exchange Commission (SEC) Rule 10b-5 by reading a reliance element of an implied cause of action into RCW 21.20.010(2). This decision misses an important distinction between state and federal law. The federal law does not specifically provide for a private right of action and thus one, which requires reliance, has been implied. To the contrary, Washington's law specifically sets forth a private cause of action. As with other states that have adopted the Uniform Securities Act, the inclusion of an express private cause of action in Washington's Act supersedes any implied private cause of action

in RCW 21.20.010, and with it, any unwritten common law elements of proof that may have lurked there. This Court should reverse Division One and hold that reliance is not a required element of a Securities Act violation in Washington State.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Department of Financial Institutions is the state agency entrusted with the administration of the Securities Act of Washington, RCW 21.20. The Act sets forth a comprehensive regulatory structure for the offer and sale of investments to Washington residents. *See* RCW 21.20.450. Under the Act, the Department performs regulatory and licensing functions, promulgates rules for the industry, and initiates enforcement actions for violations of the Act.

The Department has substantial familiarity with the purposes and provisions of the Act, the proper interpretation and application of which is critical to the Department's overall registration and enforcement efforts. Like Section 101 of the Uniform Securities Act, RCW 21.20.010 is a predicate section which defines unlawful transactions. To establish liability, the provision must be read with one of the administrative, civil, or criminal liability provisions existing under RCW 21.20.¹ Notably,

¹For example, RCW 21.20.010 is read in conjunction with RCW 21.20.110, which governs limitation, suspension, or denial of registration; RCW 21.20.280, which controls issuance of stop

RCW 21.20.430 is the express provision for civil liability in securities transactions, which, due to limited government resources, serves as a “necessary supplement” to enforcement efforts of government regulators. *See Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985). Because of this, the Department has a heightened interest in ensuring that courts interpret Washington’s Securities Act in a manner that is consistent with the Act’s purpose: investor protection. The Department also has a substantial interest in ensuring that its enforcement efforts are not critically hampered by a mistaken inclusion of a reliance requirement into RCW 21.20.010.

III. STATEMENT OF THE CASE

Federal Home Loan Bank of Seattle (FHLB) filed private securities actions against Respondents Credit Suisse and Barclays. The trial court granted summary judgment in Credit Suisse’s and Barclays’ favor. FHLB appealed the trial court’s rulings. *See Fed. Home Loan Bank of Seattle v. Barclays Capital, Inc.*, 1 Wn. App.2d 551, 554, 406 P.3d 686 (2017); *Fed. Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC*, No. 75779-2-1, slip op. at 1 (Dec. 11, 2017). Division One issued a published opinion affirming the dismissal of the *Barclays* matter after reading a reasonable

orders on securities offers by the Director; RCW 21.20.390, which provides for cease and desist orders for violations of the Act; and, RCW 21.20.400, which addresses criminal penalties.

reliance element into RCW 21.20.010(2).² *Barclays*, 1 Wn. App.2d at 565. That same day, Division One issued an unpublished opinion in *Credit Suisse* that affirmed the summary dismissal on the same grounds. *See Credit Suisse*, slip op. at 1, 9. This Court granted FHLB's petition for review and consolidated the two cases.

IV. ARGUMENT

Injecting a reasonable reliance requirement into Washington's Securities Act belies the plain language of the Securities Act and frustrates its purpose to protect investors. The Securities Act was modeled on the Uniform Act. *Cellular Eng., Ltd. v. O'Neill*, 118 Wn.2d 16, 23, 820 P.2d 941 (1991); *Go2Net, Inc. v. Freeyellow.com, Inc.*, 158 Wn.2d 247, 257, 143 P.3d 590 (2006). Notwithstanding this legislative fact, Division One's holding would have Washington's law replicate the federal common law at the cost of abandoning uniformity with uniform state securities acts ("blue sky" laws). The holding ignores the important distinction that the federal rule relies on federal common law for an implied cause of action, but Washington's statute sets out an express cause of action, and thus requires no such judicial imputation. Further, because the Department uses the same

² After determining reasonable reliance was required, the court applied an eight-factor test to determine whether any reliance was also reasonable. *Barclays*, 1 Wn. App.2d at 568. Thus, "reasonable" reliance is even more burdensome than reliance.

language in RCW 21.20.010(2) for its administrative enforcement actions, Division One's interpretation could have an unintended impact on the Department's ability to pursue fraud actions before investors have relied to their detriment. For these reasons, the Department urges this Court to reverse Division One's holding on reliance.

A. Washington's Securities Act Does Not Require Proof Of Reliance Because The Act's Plain Language Includes No Such Element And It Was Modeled On The Uniform Securities Act, Which Does Not Include Reliance

The analysis of Washington's civil liability cause of action begins with the relevant statutory provisions imposing liability. In determining the meaning of a statute, "[t]he Court's fundamental objective is to ascertain and carry out the Legislature's intent," and when "the statute's meaning is plain on its face," the court must give effect to that plain meaning. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). To that end, statutory language should not be read in isolation but rather within the context of the regulatory and statutory scheme as a whole. *State v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002) (citing *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993)).

Under the Securities Act, civil liability results from the joint operation of two separate provisions. RCW 21.20.010 is the violation provision that defines unlawful transactions, and RCW 21.20.430 provides

an express cause of action for such violations to private parties. The particular violation at issue in this matter, RCW 21.20.010(2), requires only a showing of a material misrepresentation or omission in connection with the offer, sale or purchase of a security to make a securities transaction unlawful. The provision does not provide for sanctions or civil liability; thus, RCW 21.20.430, which expressly incorporates violations of RCW 21.20.010, must be read in tandem with the violation provision in order to bring a civil cause of action. Neither of these provisions contain a reliance element. Courts should not add an element of reliance to either RCW 21.20.430 or RCW 21.20.010 where the Legislature declined to do so. *See Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999) (“Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*—specific inclusions exclude implication.”) (citation omitted).

Washington State modeled its Securities Act on the Uniform Securities Act of 1956, as have a great majority of states when enacting their state blue sky laws. *Cellular Eng.*, 118 Wn.2d at 23. The specific Securities Act provisions at issue in this case are RCW 21.20.430, modeled after

Section 410 of the Uniform Act,³ and RCW 21.20.010, modeled after Section 101 of the Uniform Act.⁴ Uniform Act Section 410 was in turn modeled on Section 12(2) of the federal Securities Exchange Act of 1933, which is recognized as providing for “strict liability.” See *Barclays*, 1 Wn. App.2d at 563. Uniform Act Section 101 was modeled on SEC Rule 10b-5, which was promulgated under § 10(b) of the federal Securities Exchange Act of 1934.⁵ Unlike actions under SEC Rule 10b-5, which provides private investors with no express private right of action, RCW 21.20.010 and RCW 21.20.430 are contained within the same statutory framework and are intended to be read together, just as Section 101 and Section 410 of the Uniform Act have operated in concert for the past sixty years.

³ Section 410 is the Uniform Securities Act’s provision which allows for private causes of action. See *Uniform Securities Act with Official Comments and Draftsmen’s Commentary*, § 410, reprinted in Louis Loss & Edward M. Cowett, *Blue Sky Law*, Appendix I at 389 (1958).

⁴ Section 101 of the 1956 Uniform Securities Act provides:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Uniform Securities Act with Official Comments and Draftsmen’s Commentary, § 101, reprinted in Louis Loss & Edward M. Cowett, *Blue Sky Law*, Appendix I at 250 (1958).

⁵ See *Basic, Inc. v. Levinson*, 485 U.S. 224, 226, 108 S.Ct 978, 99 L.Ed.2d 194 (1988)(SEC Rule 10b-5 was “promulgated under § 10(b) of the 1934 Act).

The Draftsmen’s Commentary to the Uniform Act makes clear that reliance was not intended to be a required element of a private action. *Uniform Securities Act with Official Comments and Draftsmen’s Commentary*, § 410, reprinted in Louis Loss & Edward M. Cowett, *Blue Sky Law*, Appendix I at 392 (1958). The deliberate omission of reliance has remained a mainstay of the Uniform Act for six decades.⁶ Indeed, the majority of state blue sky laws do not require a plaintiff to prove reliance or transaction causation upon a defendant’s materially false statement or omission to proceed on private securities actions.⁷ See David O. Blood, Comment, *There Should Be No Reliance in the “Blue Sky,”* 1998 BYU L.Rev. 177, 178 n.5 (at least 39 jurisdictions have substantially adopted the Uniform Act with modifications) and 194 n.95 (1998) (hereinafter, Blood Comment); accord *Gohler v. Wood*, 919 P.2d 561, 566 (Utah 1996) (listing cases from other states where reliance was not required).

The Washington Legislature modeled its Act on the Uniform Act intending to achieve harmony with other states, while merely avoiding

⁶ The most recent promulgation of the Uniform Securities Act in 2002 similarly does not require reliance. Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Securities Act*, § 509 (last rev. or amended in 2005), available at http://www.uniformlaws.org/shared/docs/securities/securities_final_05.pdf. The Official Comment states: “Unlike the current standards on implied rights of action under Rule 10b-5, neither causation nor reliance has been held to be an element of a private cause of action under the precursor to Section 509(b) [Section 410(a) of the 1956 Act].” *Id.* at 137.

⁷ The terms “reliance” and “transaction causation” are used interchangeably. See Joseph C. Long, et al., *Pleading and Proving Liability for Material Misstatements and Omissions—“By Means Of”—; Reliance*, 12A Blue Sky Law § 9:41 at 1 (2017).

inconsistency with federal law. *See* RCW 21.20.900; *see also* *Go2Net, Inc.*, 158 Wn.2d at 258 (RCW 21.20.900 requires only non-interference, not imitation of federal scheme). RCW 21.20.010 and RCW 21.20.430 were intended to follow the structure of the Uniform Act's Section 101 and Section 410 and thereby effect the two laws' shared purpose of protecting the investing public. The lower court's decision erroneously favors harmonizing Washington law with federal rules, which act as a regulatory floor, over the uniformity of more restrictive state blue-sky laws. Washington's Securities Act should be interpreted in accordance with the plain language of the statute and, consistent with the Uniform Act, without imputing a reliance element.

B. Federal Case Law on Reliance Is Inapplicable Because Washington's Securities Act Contains An Express Remedy For A Private Action Under RCW 21.20.010, While The Federal Counterpart Is Only Implied And Thus Relies on Common Law Principles

Notwithstanding the plain language of the statute, Division One based its interpretation of RCW 21.20.010 almost exclusively on federal courts' interpretations of SEC Rule 10b-5, noting in particular the similarity between Rule 10b-5 and RCW 21.20.010. *See Barclays*, 1 Wn. App.2d at 558-59. This narrow textual analysis overlooks the fact that RCW 21.20.010 is also identical to Section 101 of the Uniform Securities Act. It likewise discounts the fact that Washington's Securities Act differs significantly

from SEC Rule 10b-5 because the latter contains no express provision for civil liability. *SEC v. Rana Research*, 8 F.3d 1358, 1364 (9th Cir. 1993).⁸ This distinction is key to understanding the causes of action under Washington law versus federal law.

Washington's Securities Act has an express provision for private securities actions for violations of RCW 21.20.010; however, there is no express provision for private actions under SEC Rule 10b-5. Instead, a court-created implied cause of action has been read into the federal scheme, and common law principles have aided in defining the scope of liability for securities fraud federally. *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224, 231, 108 S. Ct. 978, 99 L.Ed.2d 194 (1988); *see also Rana Research*, 8 F.3d at 1364 (reliance requirement not found in Rule 10b-5 but "is one of the judicially created elements of and limitations" on private 10b-5 actions). Unlike the federal scheme, there is no need to graft additional common law elements into Washington's Securities Act because Washington's Act has the necessary express language providing a private cause of action for violations of RCW 21.20.010.⁹

⁸ *See also Kittilson v. Ford*, 93 Wn.2d 223, 226, 608 P.2d 264 (1979) (discussing differences between SEC Rule 10b-5 and RCW 21.20.010).

⁹ By way of recent example, the Court in *Kinney* was able to resolve the case based solely on the language of the statute without recourse to any additional elements. *Kinney v. Cook*, 159 Wn.2d 837, 154 P.3d 206 (2007).

In 1977, the Legislature incorporated a clearly defined cause of action in RCW 21.20.430 for a violation of RCW 21.20.010 and supplanted any implied private cause of action that may have existed. RCW 21.20.430 (as amended by Laws of 1977, 1st Ex. Sess., ch. 172, § 4). Where a statute is plain and unambiguous, it must be construed in conformity to its obvious meaning without regard to the previous state of the common law. *State ex rel. Madden v. Public Utility Dist. No. 1*, 83 Wn.2d 219, 222, 517 P.2d 585 (1973). Thus, even if courts read implied elements into private actions for violations of RCW 21.20.010 prior to the amendment,¹⁰ those interpretations were abrogated when the Legislature unambiguously fused civil liability to the three types of securities fraud delineated in the RCW 21.20.010(1)-(3). See *Wade v. Skipper's, Inc.*, 915 F.2d 1324, 1332 (1990) (noting that Division Two's discussion of an implied action in *Shermer* "filled an obvious and unexplainable gap," –providing an express right of action against a *seller* of securities but not a purchaser – that was later filled by the amendment of RCW 21.20.430 to include RCW 21.20.010).

Instead of recognizing that Washington's express civil remedy creates a divergence from federal case law, Division One reads the inclusion of RCW 21.20.010 into the civil liability provision as a reason to construe

¹⁰ In 1972, Division Two discussed that a seller has an implied civil cause of action for violations of RCW 21.20.010. *Shermer v. Baker*, 2 Wn. App. 845, 850, 472 P.2d 589 (1970).

it with Rule 10b-5, and therefore require reasonable reliance. *See Barclays*, 1 Wn. App.2d at 558. However, commentators have described the flaw in this reasoning. *E.g.*, Joseph C. Long, et al., *Pleading and Proving Liability for Material Misstatements and Omissions—“By Means Of”*—; *Reliance*, 12A Blue Sky Law § 9:41 at 4 (2017) (hereinafter, Long Art.). Because “civil liability under Rule 10b-5 is implied liability” federal courts have turned to the common law tort of deceit to “fill[] out the contours of the implied liability under Rule 10b-5.” *Id.* The latter is not true for the Washington statute, however, because “the anti-fraud language is part of the actual statute as is the express right to recover for its violations.” *Id.* Courts should look to the structure and intent behind the statute instead of defaulting to implied common law elements to define liability. *Id.*

A case from Tennessee has remarkable similarities to the instant question before the Court. In *Green v. Green*, 293 S.W. 3d 493 (2009), the Tennessee Supreme Court overruled a Tennessee Court of Appeals decision that held that the Tennessee Securities Act required reliance because the language is analogous to Rule 10b-5. *Id.* at 508. In overturning the lower court, which had cited two other appellate court decisions to support the reliance requirement, the Tennessee Supreme Court explained why the courts below got it wrong:

Both courts accordingly focused their analysis on the textual similarities and dissimilarities of Tenn.Code Ann. § 48-2-122 with the federal securities law without first looking to the language of Tenn.Code Ann. § 48-2-122 itself. By doing so, the courts lost sight of the fact that the Tennessee General Assembly had already included the elements of the statutory claims in Tenn.Code Ann. § 48-2-122 and, thus, that they did not need to look to federal law or the common law for guidance.

Id. Like Washington's statute, neither of the Tennessee statutory provisions at issue contained reliance as a required element; accordingly, the court determined that "[w]hen the language of a statute is clear and unambiguous, we should adopt the statute's plain meaning in its normal and accepted use."

Id. (citations omitted). Similarly, Division One ignored the plain language of the statute and the interplay between the civil liability provision (RCW 21.20.430) and the anti-fraud provision (RCW 21.20.010) when it read reliance into the statute. This imputation of common law language into the statute should be rejected by this Court.

C. Reliance Should Not Be Confused With Materiality, Which Is An Express Element Of RCW 21.20.010 And Effectively Limits Liability

If reliance crept in with an implied cause of action prior to the statute's amendment in 1977, it should not be allowed to linger in the guise of a distorted materiality requirement. Confusion regarding reliance often stems from unfamiliarity with the case law on materiality. *See* Blood Comment at 208-209 (noting some courts require reliance due to a mistaken

analysis of the materiality requirement). By way of example, Division One misread this Court's correct definition in *Clausing v. DeHart*, 83 Wn.2d 70, 73, 515 P.2d 982 (1973) of a "material fact" ("a fact to which a reasonable man would attach importance in determining his choice of action in the transaction in question") in concluding that an investor must show "reasonable reliance" on a misrepresentation or omission to succeed on a claim for violation of RCW 21.20.010. *Stewart v. Estate of Steiner*, 122 Wn. App. 258, 265 n.9, 93 P.3d 919 (2004).

The *Clausing* Court properly applied the standard for materiality, not reliance—that is, whether a *reasonable person* would attach importance to the fact, not whether *the investor* actually relied, whether reasonably or otherwise. See also *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976) (construing materiality and discussing the limitations it imposes on a seller's disclosure obligations). It is nonetheless not uncommon for courts to treat proof of an investor's actual reasonable reliance as sufficient for purposes of the materiality analysis, without explicitly stating as much. See, e.g., *Hines v. Data Line Sys., Inc.*, 114 Wn.2d 127, 134, 787 P.2d 8 (1990).¹¹ While reliance and materiality

¹¹ It appears this may have been the case in *Hines*, where the Court mentions reliance is a verity on appeal but includes no discussion (*Hines*, 114 Wn.2d at 134); it seems unlikely that the Court would insert an extra-statutory element into the Securities Act without explanation.

may require an examination of similar facts, the two concepts are analytically distinct. *See* Long Art. at 2 (“materiality and reliance, although they overlap, are distinct”). And unlike reliance, the materiality requirement is explicitly included in the text of RCW 21.20.010(2) to provide an effective limitation on liability. Conversely, reliance is not an element of RCW 21.20.010(2) and it cannot, and should not, be permitted to usurp materiality as a requirement of liability.

D. Requiring An Additional Element of Proof Harms Investors And Undermines The Deterrent Effect Of Civil Liability

What Respondents call “investor insurance” is instead a policy decision to place the burden of ensuring that no material misstatements are being made squarely on the maker of the representation – usually the seller. To the contrary, Division One’s decision would permit an issuer to make any number of material, untrue statements or omissions and yet escape liability. This creates a perilous market for retail investors, who generally cannot rely on their own investigation of the facts underlying a securities transaction. Nor is expert advice availing when only company insiders have access to critical information. The lower court’s holding would shift the burden of ensuring the accuracy of representations to the party least well-equipped to actually verify the accuracy of those statements.

Respondents cite to no tangible harm that stems from robust enforcement of the prohibition on material misrepresentations and omissions. Since 1956, the great majority of states have opted into a securities regulation scheme that does not require reliance. *Blood Comment*, 194 n.95 (collecting Uniform Act state decisions on reliance); *Gohler*, 919 P.2d at 566 (same); *see also* Long Art. at 2 n.19 (same). The respondents argue that without a reliance requirement, Washington's Securities Act would provide no defenses to liability and its protections would be outside of the mainstream. *See* Credit Suisse Suppl. Br. at 15. The contention is meritless. The Act provides defenses which expressly limit liability for a seller's misrepresentations and omissions:

[T]he Act sets forth a limited number of defenses to claimed violations of the Act, the Act's silence with respect to the equitable defenses of waiver and estoppel suggests that the legislature intended to exclude them. *See* RCW 21.20.430(3) (providing reasonable care defense for persons with control authority in liable entities); RCW 21.20.430(4)(b) (imposing three-year statute of limitations for civil actions); RCW 21.20.430(4)(b) (eliminating liability for person making written rescission offer); RCW 21.20.490 (providing defense for persons acting in good faith in conformity with rule, form, or order).

Go2net, Inc., 158 Wn.2d at 254.¹²

¹² The Go2net Court also noted the legislature's apparent intention "to hold violators strictly accountable" and not to permit a seller "to avoid statutory liability by shifting the focus to the postsale conduct of the uninformed investor." *Id.*

In any event, if the Legislature believed that limiting the liability of persons who make material misstatements or omissions outweighed the investor-protective purposes of the Securities Act, the Legislature knew how to add further limiting language to the statute. *See State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (courts “cannot add words or clauses to an unambiguous statute” when legislature has not included the language). Similarly, if the Legislature intended reliance to be an element of RCW 21.20.010, it would have expressly included reliance in the statute. The Legislature chose not to do so.

E. Examining A Reasonable Reliance Requirement In RCW 21.20.010 In the Context Of Regulatory Enforcement Actions Illustrates How the Legislature Could Not Have Intended Such A Requirement

The language of RCW 21.20.010, as the predicate section for all securities fraud causes of action, applies with equal force to the Act’s sections on civil, criminal, and administrative enforcement remedies. *See infra*, n.1. A judicial construction of RCW 21.20.010 that requires “reasonable reliance” by an investor before a violation occurs could seriously undermine the Department’s ability to bring enforcement actions in cases of fraud. While the Respondents claim the implied element of reliance does not apply to the Department’s enforcement efforts,¹³ the

¹³ *See Credit Suisse Answer to Amicus Curiae at 7 and Barclays Answer to Amicus Curiae at 7.*

interpretation of RCW 21.20.010 that Respondents urge this Court to adopt could have precisely that effect.¹⁴

The Legislature could not have intended to impose a reliance requirement on all actions under the Securities Act. This interpretation would thwart the purpose of protecting investors from issuers or other persons making blatant misrepresentations until an investor has demonstrably and reasonably relied on the statements. Instead, the Act plainly applies to the pre-reliance offer stage of securities transactions authorizing the Director to issue orders without waiting for investors to rely on the dishonesty. *See* RCW 21.20.010 (unlawful actions include those “in connection with the offer” of a security); RCW 21.20.390 (Director may issue injunctions, restraining orders and cease and desist orders for violations of the Act). For comparison, in the civil liability context, RCW 21.20.430(1) allows private parties to sue “any person, who *offers* or sells a security” before a transaction has been consummated. *Id.* (emphasis added). If all statutory language is to be given effect, liability for securities fraud

¹⁴ In contrast to a private investor suing under federal law, the SEC is not required to prove reliance when it brings enforcement actions for violations of Rule 10b-5. *See Rana Research*, 8 F.3d at 1364; *SEC v. Blavin*, 760 F.2d 706, 711 (6th Cir. 1985); *SEC v. North Am. Research and Dev. Corp.*, 424 F.2d 63, 84, (2nd Cir. 1970); *Geman v. SEC*, 334 F.3d 1183, 1191 (10th Cir. 2003). This dichotomy exists in the federal regime because enforcement actions arise from an express federal cause of action, while private actions are implied. *See Rana Research*, 8 F.3d at 1363. Under the Washington Securities Act, both enforcement and private causes of action are express, not implied.

must accrue before an investor has the opportunity to rely for purposes of RCW 21.20.430 as well.

This Court should reject the invitation to read a substantial, and extra-statutory, limitation into the Securities Act. However, if this Court holds that the Act implies an element of reliance, it should unequivocally declare that the requirement does not apply to the enforcement actions of the Department.

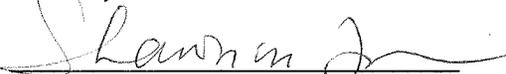
V. CONCLUSION

The Department respectfully requests that this Court reject the inclusion of a new implicit element of reliance into RCW 21.20.010(2) for securities fraud violations. This Court should hold that the Securities Act does not require proof of reliance and remand the case for further proceedings in accordance with that holding.

RESPECTFULLY SUBMITTED this 23rd day of August 2018.

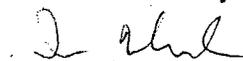
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