

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97604-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SEIU 775,

Petitioner,

v.

FREEDOM FOUNDATION,

Respondent.

**RESPONDENT, FREEDOM FOUNDATION'S, ANSWER IN
OPPOSITION TO MOTION FOR DISCRETIONARY REVIEW**

Robert Bouvatte, WSBA # 50220
Eric Stahlfeld, WSBA # 22002
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
ESTahlfeld@freedomfoundation.com
RBouvatte@freedomfoundation.com

Attorneys for Respondent

I. INTRODUCTION.

The Court should affirm the ruling of the trial court (Hon. James Dixon), and the appellate court Commissioner, Aurora Bearse, *and* the Court of Appeals at this point – all finding that discretionary review is not appropriate and declining to certify a question as to the trial court’s denial of SEIU 775’s motion to dismiss Respondent, Freedom Foundation’s (“Respondent” or the “Foundation”), citizen’s action alleging violations of the Fair Campaign Practice Act, RCW ch. 42.17A (“FCPA”). Petitioner, SEIU 775 (“Petitioner,” “SEIU 775” or the “Union”), argues that the FCPA includes two (2) 10-day windows, and that RCW 42.17A.765(4)(a)¹ requires that a citizen’s action be filed within ten (10) days of the second.

The Foundation contends that there was a single ten-day requirement in the former Statute to provide *notice* to the attorney general and the prosecuting attorney. *See* RCW 42.17A.765(4)(a)(ii). The Commissioner unequivocally approved this interpretation as reasonable, in the course of denying SEIU 775’s Motion for Discretionary Review. *See infra*, at p. 8. SEIU 775 was unsatisfied with this result and requested that the Division II Court of Appeals modify it to accept discretionary review, but the court declined. This Court should now deny the union’s *fourth* attempt to obtain discretionary review, now made in its Motion for Discretionary Review (the “Motion”), filed in this Court. The trial court declined to certify any question, and discretionary review has since been

¹ The legislature amended the FCPA in 2018, effective after the date of this lawsuit. This Response cites the former Statute, as it existed prior to the 2018 amendments. A true and correct copy of the 2018 amendments to the Statute is attached hereto as **Appendix A**.

twice denied. The lower court’s underlying decision was neither an obvious error which would render further proceedings useless, nor a probable error substantially altering the *status quo* or substantially limiting the freedom of the Union to act. Instead, SEIU 775 effectively admits that there is no basis for this Court to take discretionary review, under the Rules, and explicitly asks the Court to make an “exception.” *See* Motion, at p. 7 (“As explained, although the grounds for discretionary review of an interlocutory decision are normally exclusive, exceptions have been made.”). This Court, like the trial court and the appellate court, should decline the invitation.

II. IDENTITY OF RESPONDENT.

The Respondent is Freedom Foundation, the Plaintiff below.

III. STATEMENT OF RELIEF SOUGHT.

Respondent respectfully requests that the Court deny Petitioner’s Motion for Discretionary Review, which requests that the Court accept interlocutory review of the trial court’s and appellate court’s decisions, denying SEIU 775’s motion to dismiss the Foundation’s citizen’s action under the FCPA, and declining to accept discretionary review, respectively.

IV. STATEMENT OF CASE.

SEIU 775 has neither registered nor reported as a political committee, even though it acts like one. It spends millions of dollars on political activity. Specifically, the Complaint alleges that SEIU 775 spent over half its revenue on political activity for a period in 2016, when it spent millions to promote Initiative 1501. For purposes of the motion at issue,

SEIU 775 admitted that the Foundation has a basis to maintain the claims that SEIU 775 qualified as a political committee under the “contributions” prong of the statutory definition of a political committee.

The Foundation is a Washington nonprofit organization. It issued written notices specifying the alleged FCPA violations to the Washington Attorney General and Prosecuting Attorneys of King and Thurston County (collectively, the “public officials”), as the FCPA requires, on December 14, 2016 and on September 8, 2017. *See* First Amended Complaint for Civil Penalties for Past and Ongoing Violations of RCW 42.17A (the “Amended Complaint”), at ¶¶2, 3 (attached hereto as **Appendix B**). RCW 42.17A.765(4). The Foundation subsequently provided additional notice as required by RCW 42.17A.765(4)(a)(ii) on February 1, 2017, and October 26, 2017, respectively. *See* Amended Complaint, at ¶2 (**App. B**). None of the public officials pursued enforcement of the alleged violations. *See id.*, at ¶3 (**App. B**). On January 19, 2018, the Foundation filed this lawsuit against SEIU 775 in Thurston County Superior Court, well within the two-year statute of limitations of RCW 42.17A.765(4)(a)(iv).

On August 28, 2018, SEIU 775 filed its third Motion to Dismiss the Foundation’s claims, in part based on the creative argument that the Foundation’s claims were procedurally barred because the Foundation did not bring the citizen’s action within ten (10) days of some event, supposedly the public officials’ failure to act within ten (10) days of whenever they happened to receive the Foundation’s notice. The trial court denied SEIU 775’s motion after a hearing on November 9, 2018. *See* Verbatim Report of

Proceedings before Hon. James J. Dixon, pp. 54-55 (attached hereto as **Appendix C**). The trial court also denied SEIU 775's Motion to Certify the procedural issue for discretionary review, on December 7, 2018. SEIU 775 subsequently filed a Notice of Discretionary Review on December 10, 2018.

On May 2, 2019, the Court Commissioner, Aurora Bearse, denied SEIU 775's attempt to obtain discretionary review in this Court. *See* Ruling Denying Review, dated May 2, 2019 (attached hereto as **Appendix D**). In so doing, the Commissioner stated that “[b]ecause SEIU cannot identify an out-of-court harm, this court will not consider its motion under RAP 2.3(b)(2) (concerning discretionary review for probable error).” *Id.*, at p. 2. Moreover, the Commissioner held that “SEIU’s citations to *out-of-state cases* to support that citizen’s failure to act as stated² means that he or she waives the right to sue *may* support that the superior court erred, but they are insufficient to demonstrate that it obviously erred. RAP 2.3(b)(1).” *Id.*, at p. 5 (emphasis added). As such, the Commissioner denied discretionary review under either prong of RAP 2.3(b).

SEIU 775 then sought to have the full Division II Court of Appeals second-guess the decision of its Commissioner, by filing a motion to modify the Commissioner’s ruling on June 3, 2019. The Court of Appeals denied the motion, however, in an Order dated August 1, 2019. *See* Order Denying Motion to Modify Commissioner’s Ruling, attached hereto as **Appendix E**.

² The Union argued that the FCPA’s 10-day notice constituted a “promise” – to the government officials, apparently – that the Union could enforce against the citizen. Its position misapplies basic principles of contract law (such that only a party to a “promise” may enforce it), aside from relying upon a mish-mash theory that where the statute does not provide certain language, the common law can supply it (even where the two conflict).

V. ARGUMENT.

This Court should deny SEIU 775's Motion and reject the Union's fourth attempt to discretionary review of the Superior Court's denial of SEIU 775's third motion to dismiss. Considering the Motion against the procedural posture of the case below, it was obviously a tactical response to the Foundation's Motion to Lift Stay, which was filed on August 27, 2019 (*see* Plaintiff's Motion to Lift Stay Following Denial of Discretionary Review by Division II Court of Appeals, attached hereto as **Appendix F**). That trial court motion has now been denied, but SEIU 775's Motion remains a transparent attempt to further delay consideration of the merits of this action for as long as possible. *See* Motion, at pp. 7-8.³

But the Superior Court below acted well within the law in denying SEIU 775's motion to dismiss the action, and the Foundation's lawsuit is not procedurally time-barred. This decision, even if ultimately found to be in error, is simply not the extraordinary one that will support the unusual remedy of discretionary review. Indeed, SEIU 775 cites no cases to support this Court taking discretionary review or demonstrating how the appellate court erred by not accepting discretionary review. *See* RAP 13.5(b) (requiring same standard for discretionary review of appellate court's decisions as that of trial court's). Because Division II already declined to modify Commissioner Barse's Ruling Denying Review, the Union must

³ "Accepting review is all the more urgent because the Foundation has now asked the trial court to lift the stay in this case, even as it impressed upon this Court the importance of obtaining expedited review of the same legal issue in the dismissed actions."

(but cannot) demonstrate that the Court of Appeals erred as a matter of law in deciding a question that has been described as one of first impression.

The Court of Appeals and its Commissioner ruled correctly, and the Union offers no argument they did not – it would simply prefer not to litigate the action below until the appeals in other matters are concluded. The Union should wait until the appropriate time to pursue these arguments on appeal, if necessary. *See* RAP 13.5(d).

A. Standard for Discretionary Review.

Discretionary review is strongly disfavored and available only “in limited circumstances.” *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 105 Wn. App. 813, 820, 21 P.3d 1157, 1161 (2001). Where the trial court has denied certification of a question of law, the trial court must have committed an obvious error rendering further proceedings useless (RAP 2.3(b)(1)), or committed probable error that substantially alters the *status quo* (RAP 2.3(b)(2)). Further proceedings are not useless here, and denying the motion to dismiss does nothing to alter the *status quo*.

The scope of discretionary review is so sharply limited because the party seeking discretionary review may prevail at trial. Even if SEIU 775 loses, it will still have the right and opportunity to appeal a final judgment and any interim rulings and orders made by the trial court preceding the final judgment, under the normal rules of appellate practice. *Right-Price Recreation, LLC*, 105 Wn. App. at 820 (“Thus, a party who seeks discretionary review does not risk losing an issue not named in the notice.”) (*citing* RAP 2.4(b)). If SEIU 775 wins at trial, no review will be necessary.

Here, the Superior Court’s decision denying SEIU 775’s motion to dismiss was neither an obvious nor a probable error, because the FCPA citizen’s action provision is not “subject to more than one reasonable interpretation.” *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003, 1006 (2014) (citing *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 456, 219 P.3d 686 (2009)). Even if it were, the Commissioner expressly acknowledged that the Foundation’s interpretation (upon which Judge Dixon expressly relied) was a reasonable one. *See App. D*, at p. 5 (“But looking at section (4)(a) in its entirety, former RCW 42.17A.765(4)(a)(ii) is reasonably interpreted as a notice formality, which in conjunction with former RCW 42.17A.765(4)(a)(iii), reminds the prosecuting attorney and attorney general to act within 10 days after receiving the second notice to retain their right to sue.”). Because the Foundation’s and the trial court’s interpretation is reasonable, it cannot be an obvious or a probable error.

Moreover, further proceedings below are not useless, and nothing has changed the *status quo* or restricts the Union’s freedom to act.

B. Further Proceedings Are Not Useless, Even If the Trial Court Had Committed Obvious Error (It Did Not).

Discretionary review pursuant to RAP 2.3(b)(1) is accepted only if the Superior Court committed obvious error which would render further proceedings useless. At a minimum, discretionary review should be denied because SEIU 775 makes no showing that the Thurston County Superior Court has rendered further proceedings useless. Nor does it show the Court

committed obvious error. Further proceedings can and should go forward, to determine whether SEIU 775 is a political action committee.

The two prongs of RAP 2.3(b)(1) create a special distinction between the certainty of error and its impact on the trial. “Where there is a weaker argument for error, there must be a stronger showing of harm.” *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 463, 232 P.3d 591 (2010). SEIU 775, however, demonstrates *no* showing of harm – other than summarily stating that they would be “deeply prejudiced” by being required to proceed on the factual determination of whether SEIU 775 is a political committee. *See* Motion, at pp. 17-18. SEIU 775 cites nothing more than run-of-the-mill burdens of litigation, which – if acceptable – would require discretionary review every time a non-appealable, interlocutory order is entered. *See id.* (“Indeed, if forced to litigate whether SEIU 775 qualifies as a political committee, the Foundation would likely seek significant and broad discovery on this point.”). If this were sufficient, then discretionary review would be the rule and not the exception, and it would not be necessary to demonstrate any error below. However, the two (2) prongs of RAP 2.3(b)(1) are both necessary.

1. SEIU 775 Does Not Demonstrate Any Error, Much Less “Obvious Error.”

SEIU 775 does not cite a single authority to support its contention that the trial court’s or appellate court’s decisions were “obvious error.” In fact, SEIU 775 seemingly attempts to utilize the exact same “plain language” argument made to the trial court, in an attempt to sway this Court

that the appellate court committed an obvious error. *See* Motion, at 8.⁴ Yet, SEIU 775 offers nothing to support its contention that the decisions are obvious error, and simply relies upon its argument relating to the statutory structure. SEIU 775 *fails to cite a single case* interpreting the relevant statutory provision the way it does; nor has SEIU 775 countered the several cases cited by the Foundation which support the Foundation’s more natural and “reasonabl[e]” (*see* **App. D**, at p. 5) interpretation. As SEIU 775 has failed to even satisfy the first prong of RAP 2.3(b)(1), the Court need not proceed any further in considering the Motion.

Part of SEIU 775’s contention is that it is obvious that the ten-day notice period would allow a citizen to file a citizen’s action at some “indefinite point” thereafter, and would permit the citizen to “ignore the required notice terms and file suit at his leisure” Motion, at p. 14. This is simply erroneous logic. Section 765 creates a citizen action and defines its scope and requirements. The Legislature specifically listed each individual requirement separately. *See* RCW 42.17A.765(4)(a)(i)-(iv). And the Legislature **did** impose a statute of limitations when it required the “citizen’s action [to be] filed within two years after the date when the alleged violation occurred.” RCW 42.17A.765(4)(a)(iv). Clearly absent, however, is any provision requiring a complainant to file an action within ten days of the expiration of the second, ten-day notice provided to the

⁴ A careful reading of the statute, however, reveals that SEIU 775’s “plain language” argument (in addition to its other myriad problems) relies on an interpretation that renders subsection (ii) nonsensical, because it requires the State officials’ “failure to do so” to refer to the filing of a citizen’s action. *See infra*, at p. 21.

public officials. The Legislature could have included such a limitation if it so intended. The Legislature “understands how to enact” limits on legal actions. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 860, 50 P.3d 256 (2002). Had the Legislature intended to impose such a limitation, it “would have included” the necessary language. *Id.* With both the ten-day notice requirement and two-year statute of limitations, RCW 42.17A.765 sets forth the process which one follows prior to filing a citizen’s action, and neither of its subsections should be read in isolation. *See State, Dept. of Ecology v. Gwinn, LLC*, 146 Wn.2d 1, 43 P.3d 4 (2002) (plain meaning analysis takes into account entire statutory scheme and any related statutes); *see also Reynolds & Associates v. Harmon*, 193 Wn.2d 143, 159, 437 P.3d 677 (2019) (“As the statutory scheme above illustrates, [the provision at issue] is not a stand-alone provision. To be properly understood, it must be read with the preceding statutes.”) (emphasis added). The Legislature could have easily included a 10-day limitation if it so intended, and the only actual, 2-year time requirement that is apparent in subsection (iv)’s statute of limitations (a newer development) should govern over any requirement that Defendant seeks to *infer* from subsection (ii).⁵

SEIU 775 contends in a similar vein that *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass’n (“EFF I”)*, 111 Wn. App. 586, 49 P.3d 894 (2002) is the only court to have even discussed the requirements of former RCW 42.17A.765(4)(a) – conveniently ignoring *State ex rel.*

⁵ *See Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993) (citing *Morris v. Blaker*, 118 Wn.2d 133, 147; 821 P.2d 482 (1992)).

Evergreen Freedom Found. v. Nat'l Educ. Ass'n (“*NEA*”), 119 Wn. App. 445, 81 P.3d 911 (2003), where Division Two of the Court of Appeals expressly disavowed their language in *EFF I* relating to tolling of the statute of limitations on a citizen’s action. *NEA*, 119 Wn. App. at 452.

Despite this oversight, *EFF I* confirms the interpretation that the ten (10) day requirement is related to notice, not to the filing of a citizen’s action. A citizen action may be brought “if **three** conditions are met.” *EFF*, 111 Wn. App. at 604 (emphasis added). The court noted the statutory language (1) required a person to “give notice to the [AG] and the [PA] that there is reason to believe” a violation has occurred; (2) if, after 45 days, the AG and PA have not commenced an action, the person “must file a second notice with the AG and [PA] notifying them that the person will commence a citizen’s action within 10 days of the second notice if neither the [PA] nor the AG acts”; and, (3) the AG and [PA] must fail to bring an action within 10 days of receiving the second notice.” *Id.* Nothing indicates a fourth requirement that the *citizen* bring the action within ten (10) days.

The Court in *EFF I* did not impose a ten-day limit on the filing of a citizen action; nor did the court describe such a window when summarizing the requirements. **Nor has any court ever done so.** This is because, as the Court in *NEA* later acknowledged, the purpose of the section is to give the AGO a timeframe during which it can prevent a citizen’s complaint by filing its own. *NEA*, 119 Wn. App. at 453 (“...the statute’s clear intent [is] that the AG or county prosecutor’s “commencement of action” within the proscribed time period precludes a citizen’s action.”).

SEIU 775's interpretation is simply not how the law generally operates, and it cites no examples to the contrary. In the out-of-state cases it relies upon (*see* Motion, at pp. 15-16), such as where landlords waived the rights invoked by their notices to the tenants, the waiver required an affirmative act, *i.e.*, the acceptance of additional rent. *See Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1166 (D.C. 1985); *Abbenante v. Giampetro*, 75 R.I. 349, 352; 66 A.2d 501 (R.I. 1949); *LaGuardia Assoc. v. Holiday Hospitality Franchising, Inc.*, 92 F.Supp.2d 119, 130 (E.D.N.Y. 2000). Further, the esteemed common law doctrine of waiver says nothing of importance concerning the interpretation of a statute, and any interpretation of the corresponding statutes in those cases (which was clearly not the basis for the holdings) was based upon wholly different statutory schemes. Common law waiver/abandonment and laches cannot be held to apply here, for their part, where the Foundation's claim was brought within the applicable statute of limitations. *See Kelso Educational Association v. Kelso Sch. Dist.*, 48 Wn. App. 743, 740 P.2d 889 (1987) (*citing Brost v. L.A.N.D., Inc.*, 37 Wn. App. 372, 375, 680 P.2d 453 (1984)); *Carillo v. City of Ocean Shores*, 122 Wn. App. 592, 610, 94 P.3d 961 (2004). The very fact that SEIU 775 must rely upon "a matter of common law principle," distilled from non-binding, distinguishable precedents, all from other states, reveals all that need be said concerning the absence of any "obvious error" in the lower court's interpretation of the Statute. *See Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 437, 824 P. 2d 541 (1992); *McNeal v. Allen*, 95 Wn.2d 265, 269-70, 621 P.2d 1285 (1980). The trial court's analysis reconciled *all* of the

language and declined to add a duty that is not present. “These appear to be tenable grounds [] and do not establish the existence of either obvious or probable error.” *Minehart*, 156 Wn. App. at 464.

2. *Determining This Action on The Merits Is Not “Useless.”*

The second prong to RAP 2.3(b)(1) is that the obvious error would “render further proceedings useless.” RAP 2.3(b)(1). Fundamentally, proceeding to trial below is not useless because SEIU 775 may be able to marshal evidence sufficient to convince the trier of fact that it has not been acting as a political committee. As discussed in *Minehart*, 156 Wn. App. at 463, the Court is asked to focus on the level of harm being asserted in a motion for discretionary review to determine whether, in the case of RAP 2.3(b)(1), the alleged obvious error truly would render further proceedings useless. SEIU may still prevail, but if they do not, will have a right of appeal.

SEIU 775 cites to *Hartley v. State*, 103 Wn.2d 768, 773-74, 698 P.2d 77 (1985). However, *Hartley v. State* and *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (cited in *Hartley*) are inapposite. Indeed, SEIU 775 erroneously attempts to create a new standard for the second prong of RAP 2.3(b)(1), when it states that discretionary review is warranted where “it can save the court and the parties from engaging in ‘useless’ litigation with ‘wide implications.’” *See* Motion, at p. 17. This is a mischaracterization of the language in *Hartley*, where the Supreme Court was first referencing RAP 2.3(b)(1)’s “useless” language, and then, in passing, stated that it was “...interpreting a new statute with wide implication for governmental liability.” *See Hartley*, 103 Wn.2d at 773

(relying on “obvious or probable error” requirement as stated in *Glass*, 97 Wn.2d 880). SEIU 775 has married two (2) unrelated utterances in the opinion, in an attempt to avoid the need to demonstrate an “obvious error.” *But see Shannon v. State*, 110 Wn. App. 366, 368-69, 40 P.3d 1200 (2002) (citing *Sea-Pac Co., Inc. v. United Food and Commercial Workers Local Union No. 44*, 103 Wn.2d 800, 802, 699 P.2d 217 (1985) (confirming that discretionary review requires “obvious error which would render further proceedings useless”)). While the question decided by the lower court *does* have “wide implications,” which supported the Supreme Court’s granting of direct review *of final judgments* in other matters, this point is not material to the question of discretionary review.

SEIU 775 also attempts to analogize the Foundation’s filing of the citizen action more than ten (10) days after the second notice to the plaintiff’s efforts to avoid the statute of limitations in *Douchette v. Bethel Sch. Distr. No. 403*, 117 Wn.2d 805, 808-09, 818 P.2d 1362 (1991). However, in *Douchette*, the plaintiff acknowledged that her claims were filed beyond the statutes of limitation, but the trial court found that a material issue of fact existed on whether the statute of limitations *should be equitably tolled*. *Douchette*, 117 Wn.2d at 809. The Court of Appeals held that the statute could not be equitably tolled. 58 Wn. App. at 829. Disagreeing, the Supreme Court nevertheless affirmed the appellate court’s reversal of the trial court because there were no issues of fact sufficient to establish an equitable basis for tolling. *Id.*, at 809, 811-12. As such, in *Douchette* it *appears* the appellate court granted discretionary review not to

avoid a useless trial on issues of fact, but to address a fundamental question of law as to when, under Washington law, claims for age discrimination begin to run and whether equitable tolling would apply to same. *Id.*, at 809. Here, however, those considerations are not present, and a ruling in SEIU 775’s favor on the legal point will not dispense with the need for trial.⁶

There remain factual issues that will have to be decided at a trial, by virtue of the Counterclaim, and they are unrelated to the reason that dismissal was denied. *See, e.g., Right Price Recreation, LLC*, 105 Wn. App. at 821; *Minehart v. Morning Star Boys Ranch*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010). Thus, the Court does not need to determine whether factual issues exist in *this* record. Because there will still be proceedings leading to a trial below, even if the Court agrees with SEIU 775, review and reversal would at most narrow the claims before Judge Dixon. But simplifying issues before the trial court is an insufficient basis under RAP 2.3, and would be a waste of this Court’s resources. Thus, the Motion should be denied.

C. Discretionary Review Should Not Be Granted Under RAP 2.3(b)(2).

1. The Motion Does Not Identify Any “Probable Error.”

SEIU 775, once again, does not cite a single case to support its contention that the denial of their motion to dismiss was a probable error. Of course, if there is not “probable error” then the court does not even need

⁶ SEIU 775 has asserted against the Foundation a counterclaim under 42 U.S.C., Section 1983, thereby requiring the Court to determine a “raft” of factual issues that would not be obviated by a temporal limitation on the citizen’s actions. *See* SEIU 775’s First Amended Answer and Counterclaim (the “Counterclaim”), attached hereto as **Appendix G**.

to address the second prong of RAP 2.3(b)(2). Webster’s Third New International Dictionary defines “probable” as “that [which] is based on or arises from adequate fairly convincing though not absolutely conclusive intrinsic or extrinsic evidence or support.” *Webster’s Third New International Dictionary* 1806 (1986). SEIU 775 does not provide adequate evidence or support to demonstrate what they believe to be the court’s probable error. Instead it provides the court with the exact same arguments made to the trial court, the Commissioner, and most recently, a panel of the Division II Court of Appeals – which were a decidedly unpersuasive reading of RCW 42.17A.765.

Furthermore, the pendency of other appeals on direct review in this Court cannot, standing alone, justify direct review of the matter below, as the Union suggests. *See* Motion, at p. 7. In *Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC*, 191 Wn.2d 223, 422 P.3d 891 (2018), the Court made no statement to the effect that “...discretionary review is warranted where the Supreme Court has already accepted review of the very legal issue in dispute in a different case.” Instead, this Court granted direct review of a fifth appeal, where it was in the *same procedural posture* below as another four (4) already pending. *See Central Puget Sound*, 191 Wn.2d at 898. Here, by contrast, the three (3) pending appeals on direct review in this Court are from final judgments, while SEIU 775’s Motion seeks discretionary review of an interlocutory order – and the decision for which SEIU 775 seeks review is the polar opposite of the others. In utilizing a standard that is dependent upon “obvious” or

“probable” error, however, the rule on discretionary review is not so agnostic of the ultimate outcome as to treat all of these appeals the same. *See* RAP 2.3. Judge Dixon’s interpretation is correct, and the fact that SEIU 775’s request for expedited review has already been rejected three (3) times is more than enough reason to reject it a fourth.

For these reasons, as well as those set forth *supra* at pp. 9-14, SEIU 775 has not demonstrated a probable error made by the Superior Court that would require an analysis of the “effect prong.”

ii. Nor Can SEIU 775 Satisfy the “Effect Prong.”

The second prong of RAP 2.3(b)(2) is that “the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act.” RAP 2.3(b)(2). SEIU 775 has not established the first prong of RAP 2.3(b)(2), and SEIU also clearly failed to satisfy this second prong in first making these arguments to Commissioner Barse and then to the Div. II Court of Appeals. Indeed, SEIU 775’s showing on this prong was so deficient that the Commissioner limited her analysis to whether there was “obvious error”. *See Appendix D*, at p. 2.

The propriety of discretionary review in these precise circumstances was discussed by *State v. Howland*, 180 Wn. App. 196, 206, 321 P.3d 303 (2014). There, the court held that

Read literally, nearly every trial court decision alters the status quo or limits a party’s freedom to act to some degree and, at least arguably, substantially. But because motions for discretionary review though frequently made, are seldom granted, it is evident that a trial court order denying a motion to dismiss, excluding a crucial

piece of evidence or granting a partial motion for summary judgment is generally insufficient to satisfy the effect prong.

Howland, 180 Wn. App. at 206 (emphasis added).

SEIU 775 attempts to predicate prejudice on the normal burdens of litigation, such as “having the prospect of a citizen’s suit hanging over its head for a potentially extended period of time,” as well as the need to participate in discovery – as it did before Commissioner Bearse and before Division II.⁷ *See* Motion, at pp. 17, 19-20. This demonstrates what is already apparent: the denial of a motion to dismiss is often not sufficient to warrant discretionary review, because all it means is that the party seeking review must await the conclusion of the litigation before filing an appeal. SEIU 775 has not attempted to explain (i) why it, like all other litigants, should not be subject to the uncertainty that inheres in litigation, or (ii) why, in the absence of litigation, it is of any significance that its questionable actions may be subject to suit for a period of two (2) years, rather than ten (10) days. *See* Motion, at p. 19. After all, that limitations period is the choice

⁷ Contradicting any purported concern for undue delay, SEIU 775 has sought and obtained a stay of all proceedings in the trial court, potentially resulting in the suit “hanging over its head” for an additional (2) years or more. Defendant’s concern is not with delay, and moreover, the Union seeks only to extend the delay by way of its instant Motion. In that light, it seems rather ironic for SEIU 775 to posit that “[a]ccepting review is all the more urgent because the Foundation has now asked the trial court to lift the stay in this case, even as it impressed upon this Court the importance of obtaining expedited review of the same legal issue in the dismissed actions.” *See* Motion, at pp. 7-8. The irony is only heightened if one considers the Union’s previous statement, in opposing the Foundation’s petition for direct review, that “[t]here is no urgency to directly review a superseded statute.” *See* Respondent SEIU 775’s Answer to Statement of Grounds for Direct Review, in Supreme Court Case No. 97394-6, at p. 10. Meanwhile, the Foundation has been prejudiced by SEIU 775’s numerous attempts to delay this matter, including the present stay, because it will be hindered in obtaining fresh evidence from persons with knowledge at SEIU 775, and because the evidence that is available to it will inevitably grow stale. *See Doe v. Puget Sound Blood Center*, 117 Wn. 2d 772, 783, 819 P.2d 370 (1991); *see also Smith v. Smith*, 1 Wn. App. 2d 122, 134, 16 P.3d 45 (2017).

the Legislature made. The fact that this litigation concerns the Union’s political activities is no basis to find that it is different or more onerous than the typical lawsuit, because the constitutionality of the FCPA’s disclosure requirements (which SEIU 775 has unscrupulously violated here) are no longer subject to question. *See* Motion, at p. 19 (*citing Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wn.2d 245, 4 P.3d 808 (2000)); *see also Utter v. Building Industry Association of Washington*, 182 Wn.2d 398, 341 P.3d 953 (2015).

So considered, Petitioner’s concern over “extensive and burdensome discovery” on whether it has electoral political activity as its primary purpose (the central question in the lawsuit) betrays its true motivations. As SEIU 775 has not satisfied either the “probable error” prong or the effect prong of RAP 2.3(b)(2), it is not entitled to review here.

D. The trial court’s FCPA interpretation is correct.

As enacted by citizen’s initiative, the FCPA originally required notice only to the Attorney General, and a waiting period, before the citizen was able to bring his or her own action. The legislature amended the statute in 1975, requiring notice to the county prosecuting attorney, and providing a “ten day” notice that those officials had to bring an enforcement action within ten days of receiving this notice if they wanted to control enforcement of the alleged FCPA violations. Nothing required the public officials to act within forty-five (45) days of the initial notice of the specific alleged FCPA violations, and there was no time after that by which the citizen was required to send the additional “ten day” notice. The legislature

enacted a two-year statute of limitations in 2007. On its face, the relevant language requires the citizen “further notif[y]” the public officials that they must act. The plain language requires the citizen only to notify the officials.

In support of its position, SEIU 775 mechanically recites the “last antecedent rule.” *See* Motion, at pp. 9-10. However, the “last antecedent rule” is merely a rule of grammar that has proven useful in interpreting statutes; it need not always apply and does not apply where “...a contrary intent appears in the statute.” *See id.* (citing *Eyman v. Wyman*, 191 Wn.2d 581, 599, 424 P.3d 1183 (2018)). Here, that contrary intent is readily apparent in former Section 765, and within subsection (ii) itself, because subsection (ii) uses the critically important words “**upon their failure to do so.**” RCW 42.17A.765(4)(a)(ii). But in using the words “**to do so,**” subsection (ii) cannot refer to the officials’ failure to file a citizen’s action, because that would be nonsensical and lead to absurd results – the state officials cannot “fail” to file a *citizen’s* action, because they never have the right or ability to do so. *See, e.g., Utter*, 182 Wn.2d at 410.

The FCPA is clear. There is only a single ten (10) day period – that which the public officials have to act after receiving the notice, should they wish to control enforcement of the alleged FCPA violations.

RESPECTFULLY SUBMITTED this 30th day of September, 2019.



Robert Bouvatte, WSBA #50220
Eric Stahlfeld, WSBA #22002
P.O. Box 552, Olympia, WA 98507
p. 360.956.3482 | f. 360.352.1874
rbouvatte@freedomfoundation.com

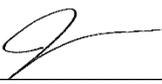
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on September 30, 2019, I caused the foregoing ANSWER IN OPPOSITION TO PETITIONER SEIU 775's MOTION FOR DISCRETIONARY REVIEW to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

Dmitri Iglitzin
Darin Dalmat
Benjamin Berger
Bernard Iglitzin & Lavitt LLP
18 West Mercer Street STE 400
Seattle WA 98119
Iglitzin@workerlaw.com
Dalmat@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

Attorneys for SEIU 775

Signed September 30, 2019, at Olympia Washington.



Jennifer Matheson

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SUPREME COURT
STATE OF WASHINGTON
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CLERK

No. 97604-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

**RESPONDENT, FREEDOM FOUNDATION'S, APPENDIX IN
SUPPORT OF ANSWER IN OPPOSITION TO PETITIONER'S
MOTION FOR DISCRETIONARY REVIEW**

Robert Bouvatte, WSBA # 50220
Eric Stahlfeld, WSBA # 22002
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
rbouvatte@freedomfoundation.com
estahlfeld@freedomfoundation.com

Attorneys for Respondent

APPENDIX	DESCRIPTION
A	Former RCW 42.17A.765
B	Plaintiff Freedom Foundation's First Amended Complaint filed 4/6/2018
C	Excerpts of Verbatim Report of Proceeds for hearing on Plaintiff Freedom Foundation's Motion to Strike and Defendant SEIU 775's Motion to Dismiss, dated 11/9/2018
D	Commissioner's Ruling Denying Review
E	Court's Order Denying Motion to Modify Commissioner's Ruling
F	Plaintiff's Motion to Lift Stay Following Denial of Discretionary Review by Division II Court of Appeals
G	SEIU 775's First Amended Answer & Counterclaim

RESPECTFULLY SUBMITTED this 30th day of September, 2019.

By: 
 Robert Bouvatte, WSBA No. 50220
 Eric Stahlfeld, WSBA No. 22002
 Freedom Foundation
 P.O. Box 552
 Olympia, WA 98507
 P (360)956-3482 | F (360)352-1874
estahlfeld@freedomfoundation.com
rbouvatte@freedomfoundation.com

Counsel for Respondent Freedom Foundation

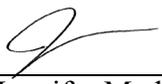
CERTIFICATE OF SERVICE

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Dmitri Iglitzin
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Bernard Iglitzin & Lavitt LLP
18 West Mercer Street STE 400
Seattle WA 98119
Iglitzin@workerlaw.com
Dalmat@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

Attorneys for Petitioner

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Jennifer Matheson

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

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APPENDIX A

2018 Wash. Legis. Serv. Ch. 304 (S.H.B. 2938) (WEST)

WASHINGTON 2018 LEGISLATIVE SERVICE

65th Legislature, 2018 Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~ .

Vetoed are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

CHAPTER 304
S.H.B. No. 2938
CAMPAIGN FINANCE

AN ACT Relating to campaign finance law enforcement and reporting; amending RCW 42.17A.055, 42.17A.110, 42.17A.225, 42.17A.235, 42.17A.240, 42.17A.255, 42.17A.265, 42.17A.450, 42.17A.750, 42.17A.755, 42.17A.765, and 42.17A.770; reenacting and amending RCW 42.17A.005 and 42.17A.220; adding new sections to chapter 42.17A RCW; creating a new section; and making appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that state campaign finance laws are intended to provide maximum transparency to the public and voters so they may know who is funding political campaigns and how those campaigns spend their money. Additionally, our campaign finance laws should not be so complex and complicated that volunteers and newcomers to the political process cannot understand the rules or have difficulty following them. The legislature believes that our campaign finance laws should not be a barrier to participating in the political process, but instead encourage people to participate in the process by ensuring a level playing field and a predictable enforcement mechanism. The legislature intends to simplify the political reporting and enforcement process without sacrificing transparency and the public's right to know who funds political campaigns. The legislature also intends to expedite the public disclosure commission's enforcement procedures so that remedial campaign finance violations can be dealt with administratively.

The intent of the law is not to trap or embarrass people when they make honest remediable errors. A majority of smaller campaigns are volunteer-driven and most treasurers are not professional accountants. The public disclosure commission should be guided to review and address major violations, intentional violations, and violations that could change the outcome of an election or materially affect the public interest.

Sec. 2. RCW 42.17A.005 and 2011 c 145 s 2 and 2011 c 60 s 19 are each reenacted and amended to read as follows:

<< WA ST 42.17A.005 >>

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "**Actual violation**" means a violation of this chapter that is not a remedial violation or technical correction.

(3) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation,

quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

~~(3)~~ **(4)** “Authorized committee” means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

~~(4)~~ **(5)** “Ballot proposition” means any “measure” as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

~~(5)~~ **(6)** “Benefit” means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

~~(6)~~ **(7)** “Bona fide political party” means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

~~(7)~~ **(8)** “Books of account” means:

(a) In the case of a campaign or political committee, a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day; or

(b) In the case of a commercial advertiser, details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(9) “Candidate” means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

~~(8)~~ **(10)** “Caucus political committee” means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) **(11)** “Commercial advertiser” means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) **(12)** “Commission” means the agency established under RCW 42.17A.100.

(11) **(13)** “Committee” unless the context indicates otherwise, includes any candidate, ballot measure, recall, political, or continuing committee.

(14) “Compensation” unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, “compensation” does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) **(15)** “Continuing political committee” means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13) **(16)(a)** “Contribution” includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) “Contribution” does not include:

(i) ~~Standard~~ **Legally accrued** interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within ~~five~~ **ten** business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection ~~(13)~~ **(16)**(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

~~(14)~~ **(17)** "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) **(18)** “Elected official” means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) **(19)** “Election” includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) **(20)** “Election campaign” means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) **(21)** “Election cycle” means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, “election cycle” means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19) **(22)(a)** “Electioneering communication” means any broadcast, cable, or satellite television or radio transmission, **digital communication**, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted **electronically or by other means**, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

(b) “Electioneering communication” does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of primary interest to the general public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) ~~A mailed~~ **An** internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

~~(20)~~ **(23)** “Expenditure” includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. “Expenditure” also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. “Expenditure” shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

~~(21)~~ **(24)** “Final report” means the report described as a final report in RCW 42.17A.235(2).

~~(22)~~ **(25)** “General election” for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

~~(23)~~ **(26)** “Gift” has the definition in RCW 42.52.010.

~~(24)~~ **(27)** “Immediate family” includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of “intermediary” in this section, “immediate family” means an individual’s spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual’s spouse or domestic partner and the spouse or the domestic partner of any such person.

~~(25)~~ **(28)** “Incumbent” means a person who is in present possession of an elected office.

~~(26)~~ **(29)(a)** “Independent expenditure” means an expenditure that has each of the following elements:

~~(a)~~ **(i)** It is made in support of or in opposition to a candidate for office by a person who is not ~~(i)~~ :

(A) A candidate for that office, ~~(ii)~~ ;

(B) An authorized committee of that candidate for that office, ~~(iii)~~ ; **and**

(C) A person who has received the candidate’s encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, ~~or (iv)~~ ;

(ii) It is made in support of or in opposition to a candidate for office by a person with whom the candidate has **not** collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

~~(b)~~ **(iii)** The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

~~(c)~~ **(iv)** The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election** or more. A series of expenditures, each of which is under ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election**, constitutes one independent expenditure if their cumulative value is ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election** or more.

~~(27)~~ **(b)** **“Independent expenditure” does not include: Ordinary home hospitality; communications with journalists or editorial staff designed to elicit a news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, controlled by a person whose business is that news medium, and not controlled by a candidate or a political committee; participation in the creation of a publicly funded voters pamphlet statement in written or video form; an internal political communication primarily limited to contributors to a political party organization or political action committee, the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid for by the worker.**

(30)(a) “Intermediary” means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

~~(28)~~ **(31)** “Legislation” means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

~~(29)~~ **(32)** “Legislative office” means the office of a member of the state house of representatives or the office of a member of the state senate.

~~(30)~~ **(33)** “Lobby” and “lobbying” each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither “lobby” nor “lobbying” includes an association's or other organization's act of communicating with the members of that association or organization.

~~(31)~~ **(34)** “Lobbyist” includes any person who lobbies either in his or her own or another's behalf.

~~(32)~~ **(35)** “Lobbyist's employer” means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(33) **(36)** “Ministerial functions” means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(34) **(37)** “Participate” means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) **(38)** “Person” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(36) **(39)** “Political advertising” includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, **digital communication**, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(37) **(40)** “Political committee” means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(38) **(41)** “Primary” for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(39) **(42)** “Public office” means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(40) **(43)** “Public record” has the definition in RCW 42.56.010.

(41) **(44)** “Recall campaign” means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(42) **(45)** “**Remedial violation**” means any violation of this chapter that:

(a) Involved expenditures totaling no more than the contribution limits set out under RCW 42.17A.405(2) per election, or one thousand dollars if there is no statutory limit;

(b) Occurred:

(i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or

(ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;

(c) Does not materially affect the public interest, beyond the harm to the policy of this chapter inherent in any violation; and

(d) Involved:

(i) A person who:

(A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and

(B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or

(ii) A candidate who:

(A) Lost the election in question; and

(B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.

(46)(a) “Sponsor” for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) “Sponsor,” for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

~~(43)~~ **(47)** “Sponsored committee” means a committee, other than an authorized committee, that has one or more sponsors.

(44) **(48)** “State office” means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) **(49)** “State official” means a person who holds a state office.

(46) **(50)** “Surplus funds” mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, “surplus funds” mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

(47) **(51)** “**Technical correction**” means a minor or ministerial error in a required report that does not materially impact the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter.

(52) “Treasurer” and “deputy treasurer” mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section.

Sec. 3. RCW 42.17A.055 and 2013 c 166 s 2 are each amended to read as follows:

<< WA ST 42.17A.055 >>

(1) The commission shall make available to candidates, public officials, and political committees that are required to file reports under this chapter an electronic filing alternative for submitting financial affairs reports, contribution reports, and expenditure reports.

(2) The commission shall make available to lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630 an electronic filing alternative for submitting these reports.

(3) State agencies required to report under RCW 42.17A.635 must file all reports electronically.

(4) The commission shall make available to candidates, public officials, political committees, lobbyists, and lobbyists' employers an electronic copy of the appropriate reporting forms at no charge.

(5) If the electronic filing system provided by the commission is inoperable for any period of time, the commission must keep a record of the date and time of each instance and post outages on its web site. If a report is due on a day the electronic filing system is inoperable, it is not late if filed the first business day the system is back in operation. The commission must provide notice to all reporting entities when the system is back in operation.

(6) All persons required to file reports under this chapter shall, at the time of initial filing, provide the commission an email address that shall constitute the official address for purposes of all communications from the commission. The person required to file one or more reports must provide any new email address to the commission within ten days, if the address has changed from that listed on the most recent report. The executive director may waive the email requirement and allow use of a postal address, on the basis of hardship.

(7) The commission must publish a calendar of significant reporting dates on its web site.

Sec. 4. RCW 42.17A.110 and 2015 c 225 s 55 are each amended to read as follows:

<< WA ST 42.17A.110 >>

The commission may:

- (1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;
- (2) Appoint an executive director and set, within the limits established by the office of financial management under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether **that** an actual violation of this chapter has occurred or to assess penalties for such violations;
- (3) Prepare and publish reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;
- (4) Conduct, as it deems appropriate, audits and field investigations;
- (5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;
- (6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence, and require the production of any records relevant to any investigation authorized under this chapter, or any other proceeding under this chapter;
- (7) Adopt a code of fair campaign practices;
- (8) Adopt rules relieving candidates or political committees of obligations to comply with the election campaign provisions of this chapter, if they have not received contributions nor made expenditures in connection with any election campaign of more than five thousand dollars; **and**
- (9) ~~Adopt rules 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. For the purposes of this subsection, "legislative information" 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 or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations concerning those agencies; and~~
- (10) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds.

Sec. 5. RCW 42.17A.220 and 2010 c 205 s 3 and 2010 c 204 s 405 are each reenacted and amended to read as follows:

<< WA ST 42.17A.220 >>

(1) All monetary contributions received by a candidate or political committee shall be deposited by ~~the treasurer or deputy treasurer~~ **candidates, political committee members, paid staff, or treasurers** in a depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution. **For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.**

(2) Political committees that support or oppose more than one candidate or ballot proposition, or exist for more than one purpose, may maintain multiple separate bank accounts within the same designated depository for such purpose only if:

(a) Each such account bears the same name;

(b) Each such account is followed by an appropriate designation that accurately identifies its separate purpose; and

(c) Transfers of funds that must be reported under RCW ~~42.17A.240(1)(e)~~ **42.17A.240(5)** are not made from more than one such account.

(3) Nothing in this section prohibits a candidate or political committee from investing funds on hand in a depository in bonds, certificates, or tax-exempt securities, or in savings accounts or other similar instruments in financial institutions, or in mutual funds other than the depository but only if:

(a) The commission ~~are~~ ~~is~~ **is** notified in writing of the initiation and the termination of the investment; and

(b) The principal of such investment, when terminated together with all interest, dividends, and income derived from the investment, is deposited in the depository in the account from which the investment was made and properly reported to the commission before any further disposition or expenditure.

(4) Accumulated unidentified contributions, other than those made by persons whose names must be maintained on a separate and private list by a political committee's treasurer pursuant to RCW ~~42.17A.240(1)(b)~~ **42.17A.240(2)**, in excess of one percent of the total accumulated contributions received in the current calendar year, or three hundred dollars, whichever is more, may not be deposited, used, or expended, but shall be returned to the donor if his or her identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state and shall be paid to the state treasurer for deposit in the state general fund.

Sec. 6. RCW 42.17A.225 and 2011 c 60 s 22 are each amended to read as follows:

<< WA ST 42.17A.225 >>

(1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17A.240;

(b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;

(c) Other information the commission shall prescribe by rule.

(3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candidate or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.

(4)(a) A continuing political committee shall file reports as required by this chapter until it is dissolved **the committee has ceased to function and intends to dissolve**, at which time, **when there is no outstanding debt or obligation and the committee is concluded in all respects**, a final report shall be filed. Upon submitting a final report, **the continuing political committee must file notice of intent to dissolve with the commission and the commission must post the notice on its web site**.

(b) The continuing political committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The continuing political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action, pursuant to this chapter, is pending against the continuing political committee; and

(iii) All penalties assessed by the commission or court order are paid by the continuing political committee.

(c) The continuing political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) The treasurer may not close the continuing political committee's bank account before the political committee has dissolved.

(e) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease, and there shall be no **further** obligations ~~to make any further reports~~ **under this chapter. Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.**

(5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the ~~eight~~ **ten calendar** days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW 42.17A.235(4) **(6)**.

(6) All reports filed pursuant to this section shall be certified as correct by the treasurer.

(7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

Sec. 7. RCW 42.17A.235 and 2015 c 54 s 1 are each amended to read as follows:

<< WA ST 42.17A.235 >>

(1) In addition to the information required under RCW 42.17A.205 and 42.17A.210, ~~on the day the treasurer is designated,~~ each candidate or political committee must file with the commission a report of all contributions received and expenditures made ~~prior to that date, if any~~ **as a political committee on the next reporting date pursuant to the timeline established in this section.**

(2) Each treasurer shall file with the commission a report, **for each election in which a candidate or political committee is participating,** containing the information required by RCW 42.17A.240 at the following intervals:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; **and**

(b) On the tenth day of the first **full** month after the election; ~~and~~ .

~~(c)~~ **(3) Each treasurer shall file with the commission a report on the tenth day of each month in** **during** which ~~no other~~ reports are required to be filed under this section **the candidate or political committee is not participating in an election campaign,** only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

(4) The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

~~(3)~~ **(5)** For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by ~~a deputy treasurer~~ **candidates, political committee members, or paid staff other than the treasurer,** the copy shall be ~~forwarded~~ **immediately provided** to the treasurer for his or her records. Each report shall be certified as correct by the treasurer ~~or deputy treasurer making the deposit~~ .

~~(4)~~ **(6)(a)** The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the ~~eight~~ **ten calendar** days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17A.205, the books of account must be open for public inspection by appointment at the designated ~~a place~~ **agreed upon by both the treasurer and the requestor,** for inspections between ~~8:00~~ **9:00** a.m. and ~~8:00~~ **5:00** p.m. on any day from the ~~eighth~~ **tenth calendar** day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within ~~twenty-four~~ **forty-eight** hours of the time and day that is requested for the inspection. **The treasurer may provide digital access or copies of the books of account in lieu of scheduling an appointment at a designated place for inspection.**

(b) At the time of making the appointment, a person wishing to inspect the books of account must provide the treasurer the name and telephone number of the person wishing to inspect the books of account. The person inspecting the books of account must show photo identification before the inspection begins.

(c) A treasurer may refuse to show the books of account to any person who does not make an appointment or provide the required identification. **The commission may issue limited rules to modify the requirements set forth in this section in consideration of other technology and best practices.**

~~(5)~~ **(7)** Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection ~~(4)~~ **(6)** of this section, ~~at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission .~~

~~(6)~~ **(8)** The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than ~~five~~ **two** calendar years following the year during which the transaction occurred ~~or for any longer period as otherwise required by law.~~

~~(7)~~ **(9)** All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

~~(8)~~ **(10)** **It is not a violation of this section to submit an amended report within twenty-one days of filing an underlying report if:**

(a) The report is accurately amended;

(b) The corrected report is filed more than thirty days before an election;

(c) The total aggregate dollar amount of the adjustment for the individual report is within three times the contribution limit per election or two hundred dollars, whichever is greater; and

(d) The committee reported all information that was available to it at the time of filing, or made a good-faith effort to do so, or if a refund of a contribution or expenditure is being reported.

(11)(a) When there is no outstanding debt or obligation, the campaign fund is closed, ~~and~~ the campaign is concluded in all respects ~~or in the case of a political committee~~ , ~~and~~ the committee has ceased to function and has dissolved **intends to dissolve**, the treasurer shall file a final report. Upon submitting a final report, **the committee must file notice of intent to dissolve with the commission and the commission must post the notice on its web site.**

(b) Any committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action under this chapter is pending against the political committee; and

(iii) All penalties assessed by the commission or court order are paid by the political committee.

(c) The political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) The treasurer may not close the political committee's bank account before the political committee has dissolved.

(e) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease, and there is shall be no further obligations to make any further reports under this chapter. Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.

Sec. 8. RCW 42.17A.240 and 2010 c 204 s 409 are each amended to read as follows:

<< WA ST 42.17A.240 >>

Each report required under RCW 42.17A.235 (1) and (2) must be certified as correct by the treasurer and the candidate and shall disclose the following:

- (1) The funds on hand at the beginning of the period;
- (2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year, with the following exceptions:
 - (a) Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;
 - ~~(b)~~ Income that results from a fund-raising activity conducted in accordance with RCW 42.17A.230 may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW 42.17A.230;
 - ~~(c)~~ **(b)** Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor; and
 - ~~(d)~~ **(c)** The money value of contributions of postage shall be the face value of the postage;
- (3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;
- (4) All other contributions not otherwise listed or exempted;
- (5) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;
- (6) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures;
- (7) The name and address of each person directly compensated for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this subsection in addition to what is required to be reported under subsection (6) of this section;

(8)(a) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount **with a value** of more than two **seven** hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days **that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or within ten business days during any other period.**

(b) For purposes of this subsection, debt does not include:

(i) Regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding; or

(ii) Any obligations already reported to pay for goods and services made by a third party on behalf of a candidate or political committee after the original payment or debt to that party has been reported;

(9) The surplus or deficit of contributions over expenditures;

(10) The disposition made in accordance with RCW 42.17A.430 of any surplus funds; and

(11) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter.

Sec. 9. RCW 42.17A.255 and 2011 c 60 s 24 are each amended to read as follows:

<< WA ST 42.17A.255 >>

~~(1) For the purposes of this section the term “independent expenditure” means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. “Independent expenditure” does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. “Volunteer services,” for the purposes of this section, means services or labor for which the individual is not compensated by any person.~~

~~(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more~~ **the contribution limit from an individual per election found in RCW 42.17A.405 for that office, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date. For purposes of this section, in addition to the meaning of “independent expenditure” under RCW 42.17A.005, any expenditure in excess of one-half the contribution limit per election for a local measure or in excess of the contribution limit per election for a statewide measure in support of or opposition to a ballot measure, must be reported as an in-kind contribution to a political committee associated with support or opposition to that ballot measure or, in the event no such committee exists, reported as an independent expenditure.**

~~(3) (2) At the following intervals each person who is required to file an initial report pursuant to subsection (2) -(1) of this section shall file with the commission a further report of the independent expenditures made since the date of the last report:~~

~~(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and~~

~~(b) On the tenth day of the first month after the election; and~~

~~(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) ~~(2)~~ shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.~~

~~The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and **If the reporting person has not made any independent expenditures since the date of the last report on file,** there shall be no obligation to make any further reports.~~

~~(4) **(3)** All reports filed pursuant to this section shall be certified as correct by the reporting person.~~

~~(5) **(4)** Each report required by subsections (2) ~~(1)~~ and (3) ~~(2)~~ of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:~~

~~(a) The name and address of the person filing the report;~~

~~(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;~~

~~(c) The total sum of all independent expenditures made during the campaign to date; and~~

~~(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.~~

<Sec. 9 was vetoed.>

Sec. 10. RCW 42.17A.265 and 2010 c 204 s 414 are each amended to read as follows:

<< WA ST 42.17A.265 >>

(1) Treasurers shall prepare and deliver to the commission a special report when a contribution or aggregate of contributions totals one thousand dollars or more, is **exceeds three times the contribution limit per election** from a single person or entity, ~~and is received during a special reporting period.~~

(2) A political committee ~~treasurer~~ shall prepare and deliver to the commission a special report when it ~~the political committee~~ makes a contribution or an aggregate of contributions to a single entity that totals one thousand dollars or more **exceeds three times the contribution limit from an individual per election** during a special reporting period.

(3) An aggregate of contributions includes only those contributions made to or received from a single entity during any one special reporting period. Any subsequent contribution of any size made to or received from the same person or entity during the special reporting period must also be reported.

~~(4) Special reporting periods, for purposes of this section, include:~~

~~(a) The period beginning on the day after the last report required by RCW 42.17A.235 and 42.17A.240 to be filed before a primary and concluding on the end of the day before that primary;~~

~~(b) The period twenty-one days preceding a general election; and~~

~~(c) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.~~

~~(5) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.~~

~~(6) Special reports required by this section shall be delivered electronically or in written form, including but not limited to mailgram, telegram, or nightletter. The special report may be transmitted orally by telephone to the commission if the written form of the report is postmarked and mailed to the commission or the electronic filing is transferred to the commission within the delivery periods established in (a) and (b) of this subsection.~~

~~(a) The special report required of a contribution recipient under subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: The **qualifying** contribution of one thousand dollars or more ~~amount~~ is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first equals one thousand dollars ~~the qualifying amount~~ or more; or any subsequent contribution from the same source is received by the candidate or treasurer.~~

~~(b) The special report required of a contributor under subsection (2) of this section or RCW 42.17A.625 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first equals one thousand dollars ~~the qualifying amount~~ or more; or any subsequent contribution to the same person or entity is made.~~

~~(7) The special report shall include:~~

~~(a) The amount of the contribution or contributions;~~

~~(b) The date or dates of receipt;~~

~~(c) The name and address of the donor;~~

~~(d) The name and address of the recipient; and~~

~~(e) Any other information the commission may by rule require.~~

~~(8) Contributions reported under this section shall also be reported as required by other provisions of this chapter.~~

~~(9) The commission shall prepare daily a summary of **make** the special reports made under this section and RCW 42.17A.625 **available on its web site within one business day.**~~

~~(10) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17A.270.~~

<Sec. 10 was vetoed.>

Sec. 11. RCW 42.17A.450 and 1993 c 2 s 5 are each amended to read as follows:

<< WA ST 42.17A.450 >>

(1) Contributions by a husband and wife **spouses** are considered separate contributions.

(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent. Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent.

Sec. 12. RCW 42.17A.750 and 2013 c 166 s 1 are each amended to read as follows:

<< WA ST 42.17A.750 >>

(1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, 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 chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the 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 chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) When assessing a civil penalty, the court may consider the nature of the violation and any relevant circumstances, including the following factors:

(i) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, resulted from a knowing or intentional effort to conceal, deceive or mislead, or from collusive behavior, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(ii) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period or otherwise had a significant or material impact on the public;

(iii) Experience with campaign finance law and procedures or the financing, staffing, or size of the respondent's campaign or organization;

(iv) The amount of financial activity by the respondent during the statement period or election cycle;

(v) Whether the late or unreported activity was within three times the contribution limit per election, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(vi) Whether the respondent or any person benefited politically or economically from the noncompliance;

(vii) Whether there was a personal emergency or illness of the respondent or member of his or her immediate family;

(viii) Whether other emergencies such as fire, flood, or utility failure prevented filing;

(ix) Whether there was commission staff or equipment error, including technical problems at the commission that prevented or delayed electronic filing;

(x) The respondent's demonstrated good-faith uncertainty concerning commission staff guidance or instructions;

(xi) Whether the respondent is a first-time filer;

(xii) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action and a demonstrated wish to acknowledge and take responsibility for the violation;

(xiii) Penalties imposed in factually similar cases; and

(xiv) Other factors relevant to the particular case.

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

(f) Each state agency director who knowingly fails to file statements required by RCW 42.17A.635 shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

(g) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(h) Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

(i) 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.

(2) The commission may refer the following violations for criminal prosecution:

- (a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;
- (b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and
- (c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW.

Sec. 13. RCW 42.17A.755 and 2011 c 145 s 7 are each amended to read as follows:

<< WA ST 42.17A.755 >>

(1) The commission may ~~(a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such a determination.~~ **initiate or respond to a complaint, request a technical correction, or otherwise resolve matters of compliance with this chapter, in accordance with this section. If a complaint is filed with or initiated by the commission, the commission must:**

(a) Dismiss the complaint or otherwise resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review;

(b) Initiate an investigation to determine whether an actual violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with chapter 34.05 RCW and subsection (3) of this section; or

(c) Refer the matter to the attorney general, in accordance with subsection (4) of this section.

~~(2)The commission~~ **(a) For complaints of remedial violations or requests for technical corrections, the commission may, by rule, delegate authority to its executive director to resolve these matters in accordance with subsection (1)(a) of this section, provided the executive director consistently applies such authority.**

(b) The commission shall, by rule, develop additional processes by which a respondent may agree by stipulation to any allegations and pay a penalty subject to a schedule of violations and penalties, unless waived by the commission as provided for in this section. Any stipulation must be referred to the commission for review. If approved or modified by the commission, agreed to by the parties, and the respondent complies with all requirements set forth in the stipulation, the matter is then considered resolved and no further action or review is allowed.

(3) If the commission initiates an investigation, an initial hearing must be held within ninety days of the complaint being filed. Following an investigation, in cases where it chooses to determine whether an actual violation has occurred, **the commission** shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW; ~~to make a determination .~~ Any order that the commission issues under this section shall be pursuant to such a hearing.

~~(3) In lieu of holding a hearing or issuing an order under this section,~~ **(a) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750(1) (b) through (h), or other requirements as the commission determines appropriate to effectuate the purposes of this chapter.**

(b) The commission may assess a penalty in an amount not to exceed ten thousand dollars per violation, unless the parties stipulate otherwise. Any order that the commission issues under this section that imposes a financial penalty must be made pursuant to a hearing, held in accordance with the administrative procedure act, chapter 34.05 RCW.

(c) The commission has the authority to waive a penalty for a first-time actual violation. A second actual violation of the same requirement by the same person, regardless if the person or individual committed the actual violation for a different political committee, shall result in a penalty. Successive actual violations of the same requirement shall result in successively increased penalties. The commission may suspend any portion of an assessed penalty contingent on future compliance with this chapter. The commission must create a schedule to enhance penalties based on repeat actual violations by the person.

(d) Any order issued by the commission is subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that jurisdiction, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760.

(4) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17A.105 **consistent with this section, when the commission believes:**

(a) Additional authority is needed to ensure full compliance with this chapter;

(b) An actual violation potentially warrants a penalty greater than the commission's penalty authority; or

(c) The maximum penalty the commission is able to levy is not enough to address the severity of the violation.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750(1) (b) through (e). The commission may assess a penalty in an amount not to exceed ten thousand dollars.

(5) The commission has the authority to waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.

(6) An order issued by the commission under this section shall be subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760.

Sec. 14. RCW 42.17A.765 and 2010 c 204 s 1004 are each amended to read as follows:

<< WA ST 42.17A.765 >>

(1)(a) Only after a matter is referred by the commission, under RCW 42.17A.755, 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 RCW 42.17A.750. **The attorney general must provide notice**

of his or her decision whether to commence an action on the attorney general's office web site within forty-five days of receiving the referral, which constitutes state action for purposes of this chapter.

(b) The attorney general should use the enforcement powers in this section in a consistent manner that provides guidance in complying with the provisions of this chapter to candidates, political committees, or other individuals subject to the regulations of this chapter.

(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 chapter, 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, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(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 produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she 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. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general ~~or the 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 the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) ~~A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.~~

(a) ~~This citizen action may be brought only if:~~

~~(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;~~

~~(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;~~

~~(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and~~

~~(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.~~

~~(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred. In the case of a citizen's action that is dismissed and that 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 attorneys' 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 reasonable attorneys' fees 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 trebled 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 or she shall be awarded all costs of trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington.~~

Sec. 15. RCW 42.17A.770 and 2011 c 60 s 26 are each amended to read as follows:

<< WA ST 42.17A.770 >>

Except as provided in RCW 42.17A.765(4)(a)(iv) **section 16(4) of this act**, any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred.

NEW SECTION. Sec. 16. A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

(1) A person who has reason to believe that a provision of this chapter is being or has been violated may bring a citizen's action in the name of the state, in accordance with the procedures of this section.

(2) A citizen's action may be brought and prosecuted only if the person first has filed a complaint with the commission and:

(a) The commission has not taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission; and

(b) For matters referred to the attorney general within ninety days of the commission receiving the complaint, the attorney general has not commenced an action within forty-five days of receiving referral from the commission.

(3) To initiate the citizen's action, after meeting the requirements under subsection (2) of this section, a person must notify the attorney general and the commission that he or she will commence a citizen's action within ten days if the commission does not take action or, if applicable, the attorney general does not commence an action.

(4) The citizen's action must be commenced within two years after the date when the alleged violation occurred and may not be commenced against a committee before the end of such period if the committee has received an acknowledgment of dissolution.

(5) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state for reasonable costs and reasonable attorneys' fees the person incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all trial costs and reasonable attorneys' fees incurred by the defendant.

NEW SECTION. Sec. 17. A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

In any action brought under this chapter, the court may award to the commission all reasonable costs of investigation and trial, including reasonable attorneys' fees 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 trebled 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 or she shall be awarded all costs of trial and may be awarded reasonable attorneys' fees to be fixed by the court and paid by the state of Washington.

NEW SECTION. Sec. 18. A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

The public disclosure transparency account is created in the state treasury. All receipts from penalties collected pursuant to enforcement actions or settlements under this chapter, including any fees or costs, must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account may be used only for the implementation of this act and duties under this chapter, and may not be used to supplant general fund appropriations to the commission.

NEW SECTION. Sec. 19. (1) The sum of one hundred twenty-five thousand dollars is appropriated for the fiscal year ending June 30, 2018, from the general fund—state account to the public disclosure commission solely for the purposes of administering chapter 42.17A RCW.

(2) The sum of one hundred twenty-five thousand dollars is appropriated for the fiscal year ending June 30, 2019, from the general fund—state account to the public disclosure commission solely for the purposes of administering chapter 42.17A RCW.

NEW SECTION. Sec. 20. 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.

Approved March 28, 2018, with the exception of Sections 9 and 10, which are vetoed.

Effective June 7, 2018.

End of Document

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SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX B

- Expedite
- No hearing set
- Hearing is set

Date:

Time:

Judge/Calendar:

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington,

Plaintiff,

v.

SEIU 775, a labor organization; DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer,

Defendants.

No. 18-2-00454-34

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES FOR PAST AND
ONGOING VIOLATIONS OF RCW
42.17A.**

I. INTRODUCTION

1. This is a citizen action brought pursuant to RCW 42.17A.765 to enforce the Washington Fair Campaign Practices Act (“FCPA”).

2. Plaintiff issued the written notices required by RCW 42.17A.765(4) on December 14, 2016, and on September 8, 2017, and as required by RCW 42.17A.765(4)(a)(ii) on February 1, 2017, and October 26, 2017.

3. Neither the Washington Attorney General nor the Prosecuting Attorneys of King or Thurston Counties have commenced an action on the violations alleged in this Complaint.

1 4. In brief, SEIU 775 has the expectation of and is receiving contributions and making
2 expenditures in support of or opposition to candidates and ballot propositions (“political activity”
3 or “political activities”), and meets the definition of a “political committee” in Chapter 42.17A
4 RCW, but has not reported those activities to the Public Disclosure Commission (“PDC”) as
5 Washington’s campaign finance law requires for political committees. SEIU 775 engages in
6 millions of dollars of political activity it has not reported.

7 5. Alternatively, SEIU 775 met the definition of “political committee” at least in the month
8 of June 2016 when it, among other reasons, spent more than half of its revenue on political
9 contributions.

10 **II. PARTIES**

11 6. Plaintiff Freedom Foundation (“FF” or the “Foundation”) is a Washington nonprofit
12 organization.

13 7. Defendant SEIU 775 (“SEIU”) is a labor union organized as an association under
14 Washington State law which elected to and received tax-exempt status under 26 U.S.C. 501(c)(5).

15 8. Defendant David Rolf at all times material hereto has been and is SEIU’s President and is
16 sued in his official capacity as a representative of SEIU who with the Secretary-Treasurer is most
17 responsible for the failure to comply with the FCPA and who will fairly represent its members.

18 9. Defendant Adam Glickman at all times material hereto has been and is SEIU’s Secretary-
19 Treasurer and is being sued in his official capacity as a representative of SEIU who with the
20 President is most responsible for the failure to comply with the FCPA and who will fairly represent
21 its members.

22 **III. JURISDICTION AND VENUE**

23 10. This Court has jurisdiction pursuant to RCW 42.17A.765(4).
24

1 11. Plaintiff issued the written notices required by RCW 42.17A.765(4) on December 14, 2016
2 and September 8, 2017.

3 12. Plaintiff issued the written notices required by RCW 42.17A.765(4)(a)(ii) on February 1,
4 2017 and October 26, 2017.

5 13. The Foundation's 45-day notice letters outlined in detail the violations of Chapter 42.17A
6 RCW set forth below.

7 14. The Foundation's 10-day notice letters included, inter alia, a statement that the Foundation
8 would bring an action against SEIU if the Attorney General and/or a Prosecuting Attorney failed
9 to bring an action within 10 days of receipt of the 10-day notice letter.

10 15. Notwithstanding these notices, neither the Attorney General nor the Prosecuting Attorneys
11 have brought an action against SEIU.

12 16. Venue is proper in this Court pursuant to RCW 4.12.020 because some part of the cause of
13 action arose in Thurston County. SEIU engages in political activity in Thurston County and is
14 required to file reports with the PDC in Thurston County. Defendants Rolf and Glickman are
15 association officers responsible for the activities of the association.

16 **IV. STATEMENT OF FACTS**

17 17. The Foundation hereby incorporates the allegations above as if fully set forth herein.

18 18. The vast majority of SEIU members are home care aides, called "Individual Providers"
19 ("IPs" or "providers"), who are subsidized by Medicaid to provide personal support to disabled
20 and/or elderly Medicaid beneficiaries to prevent them from being institutionalized.

21 19. Funding for Medicaid home care programs, including providers' pay rates, ultimately is
22 determined by state and federal elected officials.

23 20. SEIU designates millions of dollars of its funds for electoral political activities.
24

1 21. SEIU reported on its 2016 LM-2 Statement B, submitted yearly to the U.S. Department of
2 Labor, that in calendar year 2016 it made \$5,995,912 in cash expenditures for “political activity
3 and lobbying.”

4 22. SEIU reported on its federal Form LM-2 for 2016 that it gave \$1,585,000 in contributions
5 to the Campaign to Prevent Fraud and Protect Seniors, a political committee based in Seattle
6 supporting passage of statewide Initiative 1501.

7 23. SEIU reported on its federal Form LM-2 for 2016 that it gave \$173,000 in contributions to
8 the Raise Up Washington, a political committee based in Seattle supporting passage of statewide
9 Initiative 1433.

10 24. SEIU reported on its federal Form LM-2 for 2016 that it gave \$120,000 in contributions to
11 the Yes on I-125 Committee, a political committee based in Seattle supporting Seattle Initiative
12 125.

13 25. SEIU reported on its federal Form LM-2 for 2016 that 39 of its officers and employees
14 spent at least ten percent of their time engaged in political activities and lobbying.

15 26. SEIU also paid for many smaller political activities. For example, it reported on its federal
16 Form LM-2 for 2016 that it gave Corrie Watterson Bryant \$12,000 for “consulting,” stating 75
17 percent was for “political activities and lobbying.”

18 27. This level of SEIU spending is not a recent development.

19 28. SEIU’s LM-2s from 2015 and 2014 reveal that SEIU designated \$4,450,038 and
20 \$2,654,218, respectively, of its financial resources to use as expenditures for “political activities
21 and lobbying.”

22 29. Between 2010 and 2015, SEIU made almost \$3,000,000 in expenditures to support
23 candidates, initiatives, and other political committees.

1 30. SEIU has also donated over \$900,000 in in-kind contributions to many of those same
2 political organizations during the same time period.

3 31. SEIU has donated to its own political action committee over \$1,500,000 in cash and over
4 \$40,000 in in-kind contributions during the same time period.

5 32. SEIU gives money to and works on behalf of the election of candidates for Governor and
6 the state legislature, who negotiate and fund SEIU's collective bargaining agreement.

7 33. SEIU also gives to partisan groups which in turn fund and work to elect SEIU-favored
8 candidates.

9 34. SEIU has financially supported candidates for city council, county executive, superior
10 court judge, and initiatives, and generally creates the impression it is a powerhouse in Washington
11 state politics.

12 35. President David Rolf told the 2014 SEIU convention attendees, including SEIU members,
13 that the union had "put 400 professional union organizers" doorbelling in eight-hour shifts, for six
14 days, in support of a local initiative.

15 36. President David Rolf told the 2014 SEIU convention attendees, including SEIU members,
16 that if elected officials don't want to negotiate a fair contract, "we'll just write the union contract
17 into the city law."

18 37. President David Rolf told the 2013 SEIU convention attendees, including SEIU members,
19 that in the previous year the union made nearly half a million phone calls, knocked on tens of
20 thousands of doors, and delivered hundreds of thousands of votes, doing more than any other union
21 to elect Governor Jay Inslee and hold other politicians accountable.

22 38. SEIU uses its own Twitter and Facebook accounts to encourage political activity, reaching
23 more than just its members.

1 39. Based on its most recent audited financial statement, SEIU itself states that in 2016
2 approximately forty-three percent (43%) of its expenditures were not germane to collective
3 bargaining (“nonchargeable expenses”) but instead dedicated towards other activities. Most of
4 these other activities constitute political activities.

5 40. This is not unusually high. In 2015, SEIU’s audit determined that forty-one percent (41%)
6 of its expenditures were not germane to collective bargaining.

7 41. SEIU’s audit in 2012 determined that forty percent (40%) of its expenditures were not
8 related to collective bargaining.

9 42. In June 2016, SEIU spent over half of its revenue on political activities.

10 43. In June 2016, SEIU spent more funds on electoral political activity than any other kind of
11 activity.

12 44. Section 1.6 of SEIU’s Constitution and Bylaws states that part of its mission is to “[h]old
13 politicians accountable” and “[a]dvance pro-worker policy through influencing government...”

14 45. SEIU’s Constitution and Bylaws Section 2.10 mandates that it is the responsibility of every
15 SEIU member to “help build a political voice ...”

16 46. Section 4.5(8) of SEIU’s Constitution and Bylaws grants President David Rolf full
17 authority to “decide, determine, and take charge of all legislative, public policy and political
18 positions and actions of the Union, without limitation, and to establish, maintain, direct, and
19 administer all political funds, political action committees, and other political or legislative
20 accounts.”

21 47. According to SEIU’s LM-2 report from 2016, David Rolf, SEIU’s president, spent twenty-
22 two percent (22%) of his time on political activities and lobbying.

23 48. This actually is unusually low. SEIU’s LM-2 report from 2015 indicates that David Rolf
24

1 spent sixty-two percent (62%) of his time on political activities and lobbying.

2 49. According to SEIU's LM-2 report from 2014, David Rolf, spent zero percent (0%) of his
3 time on representational activities and forty percent (40%) of his time on political activities and
4 lobbying.

5 50. Section 4.6(a) of SEIU's Constitution and Bylaws grants Secretary-Treasurer Adam
6 Glickman the duties, power, and right to serve as the second principal officer, with responsibility
7 to maintain the books and records of the union.

8 51. According to SEIU's LM-2 report from 2016, Adam Glickman, SEIU's secretary-
9 treasurer, spent thirty-four percent (34%) of his time on political activities and lobbying.

10 52. According to SEIU's LM-2 report from 2015, Adam Glickman spent forty-three percent
11 (43%) of his time on political activities and lobbying.

12 53. According to SEIU's LM-2 report from 2014, Adam Glickman spent sixty-one percent
13 (61%) of his time on political activities and lobbying.

14 54. The 2013 Collective Bargaining Agreement between SEIU and the SEIU Staff Union
15 Section 23.2 unabashedly states:

16 Because state, federal, and local legislative activity affects the wages, benefits, and
17 rights of all workers, and because the long term care industry specifically is funded
18 in principal part by public dollars, the outcome of elections for many public offices
19 is very important to the Employer [SEIU 775]. [SEIU 775] regularly makes
20 endorsements and participates actively in elections. All employees are required to
do political work for candidates and member political education as a part of their
job with [SEIU 775].

21 55. Upon information and belief, more recent contracts between SEIU and the SEIU Staff
22 Union contain similar or identical provisions.

23 56. Section 6.8 of SEIU's Constitution and Bylaws requires all candidates and prospective
24

1 candidates for union offices to disclose within seven (7) days any and all contributions, other
2 financial support, and in-kind donations, specifying the amount and date receipt, and donor's
3 name, complete address and SEIU Union membership affiliation.

4 57. As shown above, SEIU's sees its stated goals and mission as attainable by engaging in
5 political activity.

6 58. SEIU's actions further its goals and mission.

7 59. SEIU wants its members to receive favorable compensation and benefits from the state of
8 Washington, and therefore seeks to negotiate a favorable collective bargaining agreement with the
9 Governor and to secure funding from the Legislature.

10 60. SEIU's political activities therefore seek to elect a receptive Governor, as the politician
11 who negotiates the employment conditions of SEIU members, and sympathetic state legislators,
12 as the politicians who approve or deny the employment conditions negotiated by SEIU and the
13 Governor (and his or her representatives).

14 61. SEIU's mission is substantially advanced by favorable election outcomes.

15 62. Indeed, SEIU's mission cannot be achieved at all without the actions of elected officials.

16 63. In a 2015 e-mail, SEIU Secretary-Treasurer Adam Glickman told SEIU members "[your]
17 voice is your vote," that their voice (vote) is how SEIU elected candidates who funded the SEIU
18 collective bargaining agreement and gave SEIU benefits to achieve its other goals and missions.

19 64. In 2016, SEIU endorsed on its website seven state-wide executive candidates, three
20 supreme court justices, three initiatives, eighty-six legislative candidates, and candidates in all ten
21 congressional races.

22 65. SEIU President David Rolf provided information on key 2016 local race results on
23 November 9, 2016 (the day after the election) in an email to SEIU members, saying he was proud
24

1 of SEIU's successes, SEIU elected candidates who fight for SEIU members, and in the next few
2 months he would be asking SEIU members to contact elected officials to support funding for the
3 collective bargaining agreement.

4 66. In a letter sent to SEIU members dated June 29, 2015, Adam Glickman, SEIU Secretary-
5 Treasurer, stated:

6 Make no mistake about it: **our [SEIU's] political action** combined with the contributions
7 we make to [SEIU] COPE – our political accountability fund – are the keys to our success.
8 By uniting and flexing our political muscle, we hold politicians accountable for our clients
9 and for ourselves. Every year, thousands of caregivers join together, knock on doors, pass
10 petitions, make phone calls, send letters and emails, and donate money **to elect politicians
who support the work we do** and the clients we serve. **And to un-elect politicians who
don't.** We've come a long way, but there's so much more to do – including creating a
pathway to \$15 for all long-term caregivers, securing a meaningful retirement and
expanding access to quality, affordable healthcare. **This doesn't come cheap.**

11 (Emphasis added.)

12 67. Under SEIU 775's and National SEIU's Constitutions and Bylaws, a certain percentage of
13 the dues SEIU collects must be forwarded to SEIU Council 14, a political committee, i.e. a portion
14 of union dues is therefore earmarked in SEIU's Bylaws for political activity.

15 68. Under SEIU 775's and National SEIU's Constitutions and Bylaws a certain percentage of
16 SEIU 775 dues must be contributed to SEIU's Political Education and Action Fund, which reports
17 in Washington as an out-of-state political committee, i.e., a portion of union dues is therefore
18 earmarked in SEIU's Bylaws for political activity.

19 69. SEIU is an organization that is funded primarily by membership dues.

20 70. In 2016, SEIU received approximately 83% of its Cash Receipts from dues and agency
21 fees collected from workers it represents.

22 71. SEIU members know, or reasonably should know, their dues will be used for political
23 activities.

1 72. Article 2.10 of SEIU’s Constitution and Bylaws states that one of the “*responsibilities*” of
2 members is “to help build a strong and more effective labor movement...and to help build a
3 political voice for working people...”

4 73. In Article 1, the Bylaws section on “Mission, Vision, and Goals,” SEIU states it will
5 influence government and hold politicians accountable.

6 74. “Holding politicians accountable” is SEIU’s way of politely telling elected officials—
7 from President, to Senator, to Governor, to legislators, to judges, to city councils—that if the
8 officials do not act as SEIU would like, the union will seek to defeat them at their next election.

9 75. A December 2014 membership packet stated that SEIU spent 40% of union dues [its
10 expenditures] on non-chargeable expenses,¹ which include activities such as “political
11 campaigning,” “supporting and contributing to political organizations and candidates for public
12 office,” “supporting and contributing to ideological causes and committees, including ballot
13 measures,” and publishing newsletters and other literature related to these activities.

14 76. In a “Notice to SEIU Healthcare 775 Represented Employees in Home Care and Adult
15 Day Health Bargaining Units Subject to Union Security Obligations,” SEIU stated that it makes
16 expenditures such as “supporting and contributing to political organizations and candidates for
17 public office; supporting and contributing to ideological causes and committees, including ballot
18 measures.”

19 77. Based on SEIU’s most recent audit, SEIU informs members that for 2018 certain home
20 care providers who object to union membership and the payment of union fees will have their
21 union fees reduced by forty-three percent (43%). This indicates that, based on past conduct, SEIU
22 expects that only 57% of its activities will be germane to collective bargaining in 2018.

23
24 ¹ "Nonchargeable expenses" are those that are not germane to collective bargaining.

1 78. Consistent yearly audits showing similar expenditure percentages indicate that SEIU
2 knows ahead of time about how much it will be designating towards collective bargaining, political
3 activities, and other expenditures.

4 79. SEIU's website includes an extensive list of political activities the union engages in,
5 including advocating the passage of new laws, both in the legislature and through ballot initiatives.

6 80. Members who attend the annual conventions listen to SEIU officers speak about SEIU's
7 extensive involvement in political activities.

8 81. The public and SEIU members who read the *Seattle Times*² will learn about the SEIU's
9 long history of dedication to spending its resources to elect candidates an support or oppose ballot
10 initiatives, as in an article dated October 8, 2016, in which Jim Brunner wrote:

11 The influential union, pivotal in the push for Seattle's \$15 minimum wage...has
12 poured more than \$1 million into Democrats' campaign committees...It's another
13 measure of clout for SEIU 775, which has turned the combined dues of thousands
of lower-wage workers into a political powerhouse in state politics over the past 15
years.

14 82. The sheer amount and number of political contributions is also such that SEIU members
15 know or reasonably should know of the political use of their dues.

16 83. SEIU sets aside and/or segregates money for political purposes.

17 84. SEIU set aside and/or segregated money from previous years to contribute to 2016 I-1501
18 campaign, and other political activities/campaigns. Additionally, according to forms C3 and C4
19 filed with the Public Disclosure Commission by the "Campaign to Prevent Fraud and Protect
20 Seniors," the political committee backing Initiative 1501 in 2016, SEIU contributed 89.5 percent
21 of the \$2,020,939.88 in cash and in-kind contributions the committee received.

22
23 ² Other articles to this effect include: [http://kuow.org/post/here-are-real-winners-and-one-loser-years-ballot-](http://kuow.org/post/here-are-real-winners-and-one-loser-years-ballot-initiatives)
24 [initatives](http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-clout-keeps-swelling) (last visited April 6, 2018) and
[http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-](http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-clout-keeps-swelling)
[clout-keeps-swelling](http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-clout-keeps-swelling) (last visited April 6, 2018).

1 85. SEIU has taken explicit action to indicate to the public that it spends money, including
2 union dues, on political activities.

3 86. SEIU has taken explicit action to indicate to SEIU members that it spends money, including
4 union dues, on political activities.

5 87. SEIU has taken explicit action to indicate to elected officials that it spends money,
6 including union dues, on political activity.

7 88. SEIU solicits contributions for political advocacy/political activities in many ways,
8 including but not limited to recruiting providers and other caregivers to become SEIU members
9 based on a stated need to engage in political activities to accomplish SEIU's goals and missions.

10 89. Upon information and belief, SEIU communications, memos, meeting minutes, accounting
11 documents, and other such evidence indicate that SEIU sets aside and/or segregates money for
12 political purposes.

13 90. Upon information and belief, SEIU communications, websites, conventions, public
14 appearances and interviews, and media indicate to SEIU members that SEIU spends union dues
15 on political activities.

16 91. Upon information and belief, other statements by SEIU, both written and verbal, indicate
17 its political mission and goals, as well as its involvement in political activities.

18 92. SEIU receives contributions, from sources other than SEIU members' dues, to support or
19 oppose candidates or ballot measures.

20 93. The SEIU national headquarters reported on Schedule 16 of its federal Form LM-2 for
21 2016 that it contributed \$189,380 to SEIU in itemized contributions supporting political advocacy.

22 94. SEIU on Schedule 14 of its federal Form LM-2 for 2016 reported that it received
23 \$1,000,000 in contributions from the national SEIU itemized for "campaign" activities.
24

1 95. The SEIU national headquarters reported on Schedule 16 of its federal Form LM-2 for
2 2015 that it contributed to Defendant SEIU \$540,000 in itemized contributions supporting political
3 advocacy.

4 96. From 2010-2015, the SEIU national headquarters reported on Schedule 16 of its federal
5 Form LM-2's that it gave SEIU 775 more than \$2,500,000 in political contributions supporting
6 political activities.

7 97. According to the U.S. Department of Labor, a "political disbursement or contribution" for
8 the purposes of Schedule 16 of LM-2s is "one that is intended to influence the selection,
9 nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative
10 or judicial public office, or office in a political organization, or the election of Presidential or Vice-
11 Presidential electors, and support for or opposition to ballot referenda."

12 98. National SEIU thus makes significant contributions to SEIU 775 with the expectation
13 and/or knowledge that SEIU 775 will spend those contributions on political activities.

14 99. SEIU gave approximately \$1.35 million to Working Washington in 2016, which is an
15 organization which regularly lobbies elected officials and supports ballot measures.

16 100. SEIU has restated its primary political purpose in broad nonpolitical terms.

17 101. The SEIU Political Education and Action Fund has elected to be a political
18 committee under 26 U.S.C. § 527 to avoid paying taxes on funds used for political
19 purposes.

20 102. The National SEIU contributed \$313,979 to the SEIU Political Education and
21 Action Fund on September 6, 2016.

22 103. The SEIU Political Education and Action Fund in turn contributed \$313,979 to
23 SEIU 775 on September 6, 2016.

1 104. The National SEIU also contributed \$100,000 to the SEIU Political Education and
2 Action Fund on September 1, 2016.

3 105. The SEIU Political Education and Action Fund in turn contributed \$100,000 to the
4 SEIU 775 Quality Care Committee on September 1, 2016.

5 106. The SEIU 775 Quality Care Committee is SEIU 775's political committee
6 registered with and reporting to the Washington State Public Disclosure Commission.

7 107. The SEIU Political Education and Action Fund deliberately distinguished between
8 SEIU 775 and its Quality Care Committee political committee, because these transactions
9 were reported on the single 2016 third-quarter IRS Form 8872 providing required federal
10 disclosures.

11 108. The National SEIU contributed \$218,487 to the SEIU Political Education and
12 Action Fund on June 29, 2017.³

13 109. The SEIU Political Education and Action Fund in turn contributed \$18,487 to SEIU
14 775 on June 29, 2017, and \$200,000 to the Quality Care Committee on July 13, 2017.

15 110. The National SEIU and its SEIU Political Education and Action Fund fully knew
16 and distinguished between the political contributions to SEIU 775 and its Quality Care
17 Committee.

18 111. The National SEIU also made four separate contributions each of \$250,000 directly
19 to local SEIU 775 in 2016.

20 V. CLAIMS

21 **Claim I: Violation of RCW 42.17A.205**

22 112. The Foundation hereby incorporates the allegations above as if fully set forth
23

24 ³ The contribution also included \$12,095 for a local's political action fund in Minnesota, for a total of \$230,582.

1 herein.

2 113. Every political committee must file a statement of organization within two weeks
3 after the date the committee first has the expectation of receiving contributions or making
4 expenditures in any election campaign. RCW 42.17A.205.

5 114. A political committee is any organization or group of persons, however organized,
6 having the expectation of receiving contributions or making expenditures in support of, or in
7 opposition to, any candidate or ballot proposition. RCW 42.17A.005 (37), (35) (defining person).

8 115. SEIU is a political committee under the contributions prong of RCW
9 42.17A.005(37).

10 116. SEIU is primarily funded by union dues.

11 117. SEIU sets aside and/or segregates its funds, including union dues, for political
12 activities.

13 118. SEIU members know or reasonably should know SEIU uses those funds, including
14 union dues, for political activities and/or intend or expect their dues to be used for political activity.

15 119. SEIU also receives contributions from organizations with the expectation and/or
16 knowledge that those contributions will be spent on political activity, including from National
17 SEIU and SEIU Political Education and Action Fund.

18 120. SEIU is also a political committee under the expenditures prong of RCW
19 42.17A.005(37).

20 121. SEIU long has not only had the expectation of making expenditures in the form of
21 direct financial contributions toward political activities, but has actually done so.

22 122. SEIU has also made expenditures in the form of organized campaign activities
23 conducted by its members and officers to support or oppose election campaigns.
24

1 123. Electoral political activity is one of SEIU’s primary purposes.

2 124. SEIU has restated its primary political purpose in broad nonpolitical terms.

3 125. SEIU has never filed a statement of organization.

4 126. SEIU has violated and continues to violate RCW 42.17A.205.

5 127. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
6 detailed below.

7 **Claim II: Violation of RCW 42.17A.235**

8 128. Plaintiff hereby incorporates the allegations above as if fully set forth herein.

9 129. Plaintiff specifically incorporates here the allegations contained in paragraphs 115-
10 124.

11 130. Every political committee is required to file reports specifying contributions
12 received, expenditures made, and amounts deposited in its bank account, at times set for by statute.
13 RCW 42.17A.235.

14 131. SEIU has received contributions, made expenditures, and deposited money in its
15 bank account.

16 132. SEIU has never filed any reports with the PDC.

17 133. In not doing so, SEIU has violated and continues to violate RCW 42.17A.235.

18 134. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
19 detailed below.

20 **Claim III: Violation of RCW 42.17A.205, June 2016**

21 135. Plaintiff hereby incorporates the allegations above as if fully set forth herein.

22 136. In the alternative, should SEIU not be liable as a political committee for the entire
23 period covered by this Complaint or any shorter period, SEIU was a political committee in June
24

1 2016.

2 137. The Foundation specifically incorporates herein the allegations above in paragraphs
3 115-124 with respect to June 2016.

4 138. SEIU long has not only had the expectation of making expenditures in the form of
5 direct financial contributions to political candidates and committees, but in June 2016, actually
6 spent over half of its revenue on political activities.

7 139. In June 2016, SEIU spent more on political activity than any other kind of activity.

8 140. SEIU has never filed a statement of organization.

9 141. SEIU has violated and continues to violate RCW 42.17A.205.

10 142. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
11 detailed below.

12 **Claim IV: Violation of RCW 42.17A.235, June 2016**

13 143. Plaintiff hereby incorporates the allegations above as if fully set forth herein.

14 144. In the alternative, should SEIU not be liable as a political committee for the entire
15 period covered by this Complaint, or any shorter period, SEIU was a political committee in June
16 2016.

17 145. The Foundation specifically incorporates herein the allegations above in paragraphs
18 115-124 with respect to June 2016.

19 146. SEIU received contributions, deposited money in its bank account, and in June
20 2016, made political expenditures of more than half its revenue on political activities.

21 147. In June 2016, SEIU spent more funds on political activity than any other kind of
22 activity.

23 148. Every political committee is required to file reports specifying contributions
24

1 received, expenditures made, and amounts deposited in its bank account, at times set for by statute.
2 RCW 42.17A.235.

3 149. SEIU has never filed any such reports with the PDC.

4 150. In not doing so, SEIU has violated and continues to violate RCW 42.17A.235.

5 151. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
6 detailed below.

7 **VI. REQUESTED RELIEF**

8 WHEREFORE, Plaintiff requests the following forms of relief:

9 1. For such remedies as the Court deems appropriate under RCW 42.17A.750, including:

10 a. a judgment against Defendants in the amount of a \$10,000 (ten thousand dollar)
11 penalty pursuant to RCW 42.17A.750(1) for each violation of chapter 42.17A
12 RCW, in favor of and payable to the State of Washington, in an amount to be
13 determined through discovery and/or at trial;

14 b. a judgment against Defendants in the amount of a \$10 (ten dollar) penalty pursuant
15 to RCW 42.17A.750(1)(d) for each day defendant failed to file a properly
16 completed statement or report, in favor of and payable to the State of Washington,
17 in an amount to be determined through discovery and/or at trial;

18 c. a judgment against Defendants in the amount of a civil penalty equivalent to the
19 amount SEIU failed to report as required, pursuant to RCW 42.17A.750(f); and

20 d. a finding that Defendants' violations were intentional and trebling the amount of
21 judgment, which for this purpose shall include costs, as authorized by RCW
22 42.71A.765(5);

23 e. any other penalty the Court deems appropriate under RCW 42.17A.750, et seq.,
24

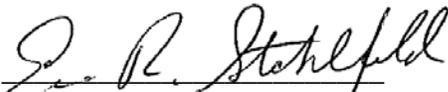
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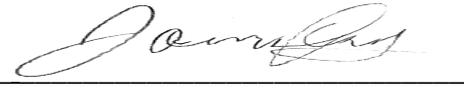
RCW 42.17A, or other law.

- 2. All costs of investigation and trial, including costs and reasonable attorneys' fees, as authorized by RCW 42.71A.765(5).
- 3. All such other relief the Court deems appropriate.

//////////

Dated this 6th day of April, 2018.

By: 
 Eric R. Stahlfeld, WSBA #22002
 P.O. Box 552, Olympia, WA 98507
 PH: 360.956.3482 | F: 360.352.1874
ERStahlfeld@freedomfoundation.com
Counsel for Freedom Foundation

By: 
 James G. Abernathy, wsba #48801
 P.O. Box 552, Olympia, WA 98507
 PH: 360.956.3482 | F: 360.352.1874
JAbernathy@freedomfoundation.com
Counsel for Freedom Foundation

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX C

A P P E A R A N C E S

For the Plaintiff: **Eric Rolf Stahlfeld**
Attorney at Law
145 SW 155th Street
Suite 101
Burien, WA 98166-2591
206-248-8016

For the Defendant: **Benjamin Daniel Berger**
Attorney at Law
- and
Dimitri L. Iglitzin
Attorney at Law
Schwerin, Campbell, Barnard,
Iglitzin & Lavitt, LLP
18 West Mercer Street
Suite 400
Seattle, WA 98119-3971
443-797-2965
Berger@workerlaw.com
206-285-2828
Iglitzin@workerlaw.com

I N D E X

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1 November 9, 2018

Olympia, Washington

2 MORNING SESSION

3 The Honorable Judge James J. Dixon, Presiding

4 Kathryn A. Beehler, Official Reporter,

5 --oOo--

6 THE COURT: The last matter, I think,
7 Freedom Foundation versus SEIU 775.

8 MR. STAHLFELD: Good morning,
9 Your Honor.

10 THE COURT: Good morning.

11 MR. BERGER: Good morning Your Honor.

12 THE COURT: Good morning.

13 MR. BERGER: Your Honor, may I approach?

14 THE COURT: Yes, please.

15 MR. BERGER: I was hoping, for my
16 presentation to offer, a few visual exhibits.

17 THE COURT: Okay. Thank you.

18 So the matter comes before the court on
19 Defendant's motion to dismiss. There's also a
20 motion to strike certain attachments to
21 Mr. Iglitzin's declaration. So let's hear the
22 motion to strike first.

23 MR. STAHLFELD: Thank you, Your Honor.
24 May it please the Court, I'm Eric Stahlfeld with
25 the Freedom Foundation on this. This is a

1 12(b)(6) motion context which *Brown vs.*
2 *MacPherson*, long established law, says the court
3 may not go beyond the pleadings. Mr. Iglitzin has
4 submitted a declaration of 500-and-some pages,
5 which is well beyond the pleadings. The basic
6 rule under 12(b)(6) is, the court should not
7 consider that.

8 In the last couple of years, *Rodriguez*
9 suggests that if the Complaint does reference
10 incompletely a document, the court can consider
11 the remainder of the document. But at that point,
12 the only document arguably included is the
13 reference in the Complaint to the purposes that
14 SEIU has in its bylaws and constitution. That's
15 Exhibit A to Mr. Iglitzin's declaration, and we
16 don't object to the court considering that.

17 The remainder of it goes well beyond
18 anything that's possibly included in the
19 Complaint. It borders on absurd to argue that as
20 a predicate for a citizen's action, we have to
21 submit a 45-day letter and indicating that
22 suggests that perhaps the 45-day letter should be
23 submitted. That's been argued in the prior case.
24 It's not in this case. But it's still the same
25 principle. There are predicate conditions to

1 bringing a citizen's action, and that is all
2 that's alleged. It doesn't permit the court to go
3 and pull every single document that's possibly
4 related in this case or a similar case and then
5 consider it.

6 Lastly, the point of introducing this is,
7 on the motion to dismiss, the 12(b)(6) motion,
8 page 16 and 17 is to say no evidence was
9 submitted. It said multiple times, based on the
10 documents which Mr. Iglitzin attached on 16 it's
11 line -- basically starting at 11, no evidence was
12 submitted. Lines 22 and 23, PC staff concluded
13 that no evidence has been submitted. Page 17,
14 line 3, the second paragraph, however no evidence
15 was found. And line 14, no evidence was found.
16 That's the point of why they are trying to bring
17 this. That's improper in a 12(b)(6) motion and it
18 should be stricken.

19 Thank you.

20 THE COURT: Thank you.

21 MR. BERGER: Good morning, Your Honor.
22 May it please the Court, I'm Ben Berger on behalf
23 of SEIU 775. The SEIU's position is that the
24 documents should not be stricken, and that's for
25 several reasons. The first is that the court may

1 consider publicly available documents.

2 *Rodriguez* and other cases are quite clear
3 that courts may take judicial notice of documents
4 if their authenticity is not subject to reasonable
5 dispute. And with due respect to counsel, I
6 believe that the Freedom Foundation's reply on
7 this motion misstates the test for judicial
8 notice. It's not, as they claim, whether the
9 conclusions and facts within an admittedly
10 authentic document are subject to reasonable
11 dispute. The initial threshold question, whether
12 notice can be taken, is simply whether a
13 document's authenticity, that is, does it
14 purport -- is it what it purports to be, is that
15 subject to reasonable dispute.

16 Then there is the -- a next question. So a
17 court can consider both facts and legal
18 conclusions in publicly available documents -- I'm
19 sorry. The court may consider both facts and
20 legal conclusions in publicly available documents
21 even when the content is disputed, so long as the
22 document is authentic.

23 SEIU is not arguing, as I believe the
24 Foundation states or implies, that the court must
25 adopt the finding within a judicially noticed

1 public document. SEIU is merely arguing that the
2 court may consider those documents and give them
3 whatever weight it considers due. And I will
4 mention in a second the standard for considering
5 opinion letters and what weight is due.

6 I believe a case that supports considering
7 public documents, even when the underlying facts
8 and legal conclusions may be disputed, is in one
9 of the unpublished cases that SEIU cites in its
10 response, and that's *Kudina vs. CitiMortgage*. The
11 underlying facts and legal issues in the federal
12 litigation, the documents for which were
13 noticed -- those underlying issues were presumably
14 disputed by the parties in that federal
15 litigation, yet the state court still considered
16 those documents and determined that they were
17 relevant to finding that the state court claims
18 were barred by the doctrine of res judicata. So I
19 believe that the Foundation would have to show
20 that there's some ground for distinguishing the
21 authenticity of court documents versus
22 administrative documents, which I do not believe
23 that the Foundation has attempted to do.

24 I'd like to turn to the next round for
25 considering the documents, which is considering

1 the PDC and the AG letters as legal authority.
2 It's quite elementary, of course, that the court
3 may consider a legal authority on a motion to
4 dismiss and is not bound by the legal conclusions
5 in a complaint.

6 The Foundation, if I understand their
7 argument correctly, makes two arguments to support
8 that the PDC opinions are not legal authority.
9 The first is that the Foundation claims that the
10 court cannot consider opinion letters which are
11 not official agency actions under Washington law.
12 But Washington courts have adopted the U.S.
13 Supreme Court's view on the effect of opinion
14 letters, which was stated in *Skidmore vs. Swift*,
15 and that's 323 U.S. 134. And the case which
16 adopted that is *Peterson vs. Kitsap Community*
17 *Federal Credit Union*, 171 Wn. App. 404. And in
18 footnote 20 there the court noted that opinion
19 letters are entitled to respect, to the extent
20 they have the power to persuade, and the court
21 found in that case that the opinion letters cited
22 were not persuasive. But the court there did not
23 do what counsel is suggesting here which is that
24 the court should not only not consider the opinion
25 letters offered but should in fact strike them.

1 Secondly, and I think relatedly, the
2 Foundation argues that in the case of *Utter vs.*
3 *Building Industry Association of Washington*, which
4 is 182 Wn. 2d 398, it precludes deference and
5 reliance on PDC opinions. Now, in *Utter*, it's
6 true that the court did say that a trial court
7 cannot defer to or rely on PDC conclusions, to the
8 extent that would have the court forego its own
9 independent analysis, which is what the Court of
10 Appeals in that case did. But I believe that in
11 this respect, the Foundation's argument conflates
12 the concept of deference and consideration.

13 SEIU is not asking for the court to give
14 these opinion letters deference in the chevron
15 sense that the opinions of the PDC control, so
16 long as its determinations are reasonable or that
17 the court should automatically defer to those
18 conclusions. Again, the court is -- or SEIU is
19 asking the court to consider those letters,
20 opinion letters, for their persuasive value. If
21 the court finds them persuasive, it may cite to
22 them. If it doesn't, it need not rely on them.
23 But *Utter* never suggested that PDC opinions cannot
24 be considered by the court, much less are required
25 to be stricken.

1 And I believe the last reason why the
2 Foundation's motion should be denied is, this
3 issue did come up in another case, which counsel
4 alluded to. But I believe what counsel omitted to
5 say in that case, which was *Freedom Foundation vs.*
6 *Teamsters 117*, and the case number in that was
7 17-2-6578-34, which was before Judge Schaller,
8 Judge Schaller determined that the PDC
9 determinations could be considered, and she denied
10 the Foundation's motion to the extent they sought
11 the exclusion of those opinions. Judge Schaller
12 also held that the case relied upon by the
13 Foundation, *Utter vs. Building Industry*
14 *Association*, did not preclude consideration of PDC
15 opinions as persuasive authority.

16 Thank you.

17 THE COURT: Thank you.

18 Mr. Stahlfeld?

19 MR. STAHLFELD: Thank you, Your Honor.

20 To address the last point, Judge Schaller did
21 strike a number of documents which related to the
22 particular party at issue, Teamsters 117. We have
23 a number of documents here which are related to
24 the SEIU 775. If you're going to follow what
25 Judge Schaller ruled, she struck the documents

1 related to 775, which I think is "B" through "G,"
2 I believe --

3 THE COURT: "F"?

4 MR. STAHLFELD: -- "F," something like
5 that. Yeah. And then one is left with merely
6 other decisions -- or they're not even decisions
7 by the PDC.

8 Characterizing these as opinions of the
9 PDC just simply is incorrect. And typically, it
10 would be a staff report from somebody to the
11 Commission. The Commission frequently may or may
12 not adopt it. None of them has the Commission
13 adopted and sent and then acted on. And that is
14 what *Utter* says is what the court can rely on, in
15 the case of *Utter* in a summary judgment motion, to
16 try to create a factual matter and perhaps deny a
17 motion under summary judgment based on that
18 factual matter.

19 In this case it's a 12(b)(6) which is even
20 a more difficult standard -- it should be a more
21 difficult standard for 775 to meet. And they --
22 to whatever extent they're going to try to rely on
23 these as documentary evidence submitted in a
24 declaration for the court to rely on cannot create
25 whatever's factual situation, for instance, no

1 evidence was found, which is what they are asking
2 for in their motion to dismiss. And the court
3 cannot find that based on *Utter*.

4 Thank you.

5 THE COURT: Thank you. The court denies
6 the motion to strike. The court will afford the
7 exhibits appropriate weight in its decision with
8 respect to the motion to dismiss.

9 The court has not reviewed all 525 pages of
10 the attachments to the declaration, but the court
11 has skimmed them. I know what they are. But
12 again, the court will attach whatever weight or
13 importance it deems appropriate to those
14 attachments contained within Mr. Iglitzin's
15 declaration as it deems appropriate when deciding
16 the motion to dismiss.

17 The court is going to take -- let's go off
18 the record.

19 (A discussion was held off the record.)

20 THE COURT: The court is going to take
21 its midmorning recess for 15 minutes. It's 10:19.
22 I can't do the arithmetic, but we'll be in recess
23 for 15 minutes. Thank you.

24 (A recess was taken.)

25 * * * THE COURT: All right. So we're back to

1 Freedom Foundation vs. SEIU 775. The matter
2 comes before the court on the defendant's motion
3 to dismiss. The court will hear first from
4 Mr. Berger, presumably.

5 MR. BERGER: Thank you again,
6 Your Honor. Before the court this morning, as
7 Your Honor indicated, is SEIU 775's motion to
8 dismiss.

9 There are several issues for the court to
10 consider, the first of which is whether the
11 Foundation's suit is procedurally barred based on
12 a 10-day filing window.

13 The next two are the sufficiency of the
14 Foundation's allegations that SEIU is or was a
15 political committee, both generally speaking under
16 the expenditure prong and also specifically for
17 the month of June 2016.

18 The next issue is whether the Foundation
19 may recover attorney's fees from SEIU.

20 And the last issue, which I do not intend
21 to address unless Your Honor asks me to, is
22 whether the 2018 amendments to the Fair Campaign
23 Practices Act apply retroactively to bar this
24 suit, as I understand Your Honor has ruled on this
25 issue in an unrelated matter.

1 So I'll turn first to the question of
2 the procedural bar. The plain language of the
3 statutory provision at issue, which is
4 RCW 42.17A.765(4)(a) -- the language at issue is a
5 bit clunky, but its meaning is absolutely clear.
6 There are four preconditions to filing a citizen's
7 action under (4)(a)(i), the officers -- and
8 by "officers," I mean the attorney general and the
9 county prosecutor for the county where the
10 violations allegedly occurred -- these officers do
11 not bring a suit within 45 days of a first notice
12 in which the citizen alleges a perceived violation
13 of the FCPA.

14 Subsection (ii) then states thereafter --
15 and I'm partially paraphrasing this here -- the
16 citizen notifies the officers that he or she
17 will -- and now this is a direct quote -- "commence
18 a citizen's action within ten days upon their
19 failure to do so," and that "their" is the
20 officers' failure to do so.

21 Subsection (iii) which further defines what
22 that failure is alluded to in subsection (ii)
23 states that the officers must fail -- fail to sue
24 within ten days of receiving the second citizen
25 notice. And then (iv) the citizen must sue within

1 two years of the alleged violation.

2 So the overall structure that results here
3 is, there are 45 days -- a 45-day window for the
4 state to act upon initial notice, a 10-day window
5 which begins at the citizen's discretion for the
6 state to act within ten days, and then on the
7 conclusion of that state window, a 10-day window
8 for the citizen to act, as long as that all
9 occurs within -- as long as the final time for the
10 citizen to act occurs within two years of the
11 alleged violation.

12 Now, how did this play out in this case? I
13 don't think there's really any dispute on the
14 facts that the Foundation did not commence its
15 suit on any of its claims within ten days of the
16 officers failing to file suit here. It's not even
17 close. And rather than reciting the particular
18 dates at issue, I've presented to Your Honor a
19 chart which lays out all of the dates. And it's
20 somewhat confusing, because for two of the claims,
21 counts 1 and 2, there were notices filed in
22 early -- or late 2016, early 2017. With respect
23 to counts 3 and 4, notice was filed several months
24 later. And so with respect to the first set, the
25 suit would be 331 days late; with respect to

1 counts 3 and 4, it would 64 days late.

2 So what are the issues before Your Honor
3 that have been raised in the briefs. I think the
4 first issue and what is the dispositive issue is
5 whether the language that a suit must be brought
6 within ten days in subsection (ii), if that
7 applies to the citizen's action or the officers'
8 action. And I do not believe that the plain
9 language is disputed whatsoever. Bringing suit
10 within ten days is attached directly to the
11 immediately preceding phrase "citizen's action."

12 So I think initially, just a common passing
13 knowledge of English grammar would suggest -- or
14 it require that you attach it to the immediately
15 preceding phrase. But there's also the legal
16 canons cited to in the brief of the last
17 antecedent rule which states expressly that you
18 must attach any modifying language to the
19 immediately preceding words unless even earlier
20 preceding words would suggest that the modifying
21 words apply more broadly. But there is absolute
22 no canon of construction that let's you move
23 modifying language to modify subsequent phrases or
24 delete language entirely. It's not a --
25 there's not a -- no canon exists that would allow

1 that.

2 In the Foundation's response, the
3 Foundation points to statutory language that
4 existed in the original 1972 voter initiative.
5 And I think it is salutary to conduct the
6 difference between the two. The original
7 language, which I'm quoting from the Foundation's
8 response brief on page 9, states that,

9 "An action may be brought if the attorney
10 general has failed to commence an action within
11 ten days after a notice inviting" -- and "by the
12 citizen, that a citizen's action will be brought
13 if the attorney general does not bring an action."

14 So originally there was no modifying
15 language following "will be brought."
16 Beginning in 1975, such modifying language does
17 exist. It's a real significant addition. And to
18 eliminate that addition from 1975 would not only
19 violate the rule of the -- the last antecedent
20 rule, but also it would violate the rule against
21 surplusage. It would just weed it out entirely.

22 The second issue, Your Honor, that's raised
23 in the briefs is whether the fact that the ten-day
24 window is framed as part of the notice that the
25 citizen must make. And the fact that the ten-day

1 window is framed as part of the representations
2 made in the notice means that the citizen doesn't
3 have to act on that representation. This is noted
4 by the Foundation in its response brief. But also
5 again, clearly, it must be held to their own
6 representations. This is basically an analogous
7 situation to the concept of judicial estoppel. If
8 you make a representation to the court and you
9 benefit from it, if you're entitled to some right
10 based on that representation, you have to follow
11 through on it.

12 And there are a number of statutory regimes
13 that SEIU cites to in its reply brief where this
14 is spelled out explicitly; particularly in the
15 context of landlord-tenant relationships, if the
16 landlord provides a notice, the statute doesn't
17 necessarily say the landlord must act in
18 accordance with the notice and the steps he or she
19 says he will take. But if he does not do so, then
20 he would lose rights of eviction that would
21 otherwise exist.

22 And the same thing is true here, with one
23 important exception or modification, which is that
24 here the citizen is actually stepping into the
25 shoes of the state. So it's not merely that it

1 would be the case that limiting this just to the
2 original notification means that a person is
3 making a misrepresentation on their own behalf.
4 It would really be countenancing the person to
5 make a misrepresentation on the state's behalf.
6 And I think that's just quite impossible.

7 Lastly, I would just consider structurally
8 what the alternative reading would be here. If
9 this is limited to the notification, it would mean
10 that the citizen must -- is merely telling
11 officers he will do what at some point he's
12 already entitled to do under (iii) -- excuse me,
13 by the operation of (ii), that is, by the failure
14 of the officers to sue within that time. So
15 subsection (ii) would really add nothing. And if
16 the drafters of the statute had wanted that, they
17 could have had subsection (iii) just simply follow
18 subsection (i) in a very clean, smooth, parallel
19 form. But that's not what they chose to do when
20 they made the amendments in 1975.

21 The third issue before Your Honor as to the
22 ten-day window is whether the existence of such
23 window, which is a post-administrative exhaustion
24 limitation, can coexist with a limitation based on
25 the date of the alleged violation. And it's quite

1 clear that it can. First, as a matter of timing
2 it certainly can, because the second notice is
3 discretionary when it occurs.

4 Under the statutory language, (ii) merely
5 says "thereafter," which is thereafter the
6 expiration of the first 45-day period, the citizen
7 must file the second notice. But when exactly the
8 citizen files the notice, be it early in the
9 two-year period or close to the end of the
10 two-year period, that's entirely up to the
11 citizen. So there's really a lot of room for the
12 citizen to work with within those two years.

13 But also as a matter of other statutory
14 regimes, it's quite clear that the coexistence of
15 a post-administrative exhaustion limitation and a
16 substantive violation-based limitation, those two
17 things stand side by side in a number of regimes.
18 And I would point in particular, Your Honor, to
19 the constitutional provisions in the Colorado
20 State Constitution cited to in SEIU's reply. This
21 is the -- this particularly deals with citizen's
22 action for campaign finance violations. That is
23 the same kind of system where you have to exhaust
24 your remedies and then file -- I believe it's
25 within 30 days in that instance. But also,

1 there's an overall time limitation to a certain
2 number of years.

3 And also, beyond campaign finance, this
4 kind of system works in Title VII, the ADA, and
5 the Clean Water Act. So it's certainly not
6 unprecedented or not unreasonable for the
7 Washington Legislature to impose a similar kind of
8 dual requirement. So that's the first procedural
9 bar question.

10 If Your Honor intends to move on to the
11 particular allegations, then I'm -- then I will
12 address that, as well. So the first is whether
13 SEIU -- or whether the Foundation has sufficiently
14 alleged that SEIU is a political committee under
15 what's known as the expenditure prong. And here I
16 think there's some background that's required to
17 explain what I mean by "expenditure prong."

18 So political committees, within the meaning
19 of the SCPA, is defined in RCW 42.17A.005(40).
20 And it defines a political committee as a person
21 having the expectation of receiving or making
22 expenditures in support or opposition of a
23 candidate or ballot initiative. So this
24 alternative language with respect to expenditures
25 and contributions creates two prongs: The

1 contribution and the expenditure prong.

2 Here, SEIU is only contesting the
3 allegations as to the expenditure prong -- not
4 that SEIU concedes the contribution prong, but for
5 the purpose of the 12(b) motion, only the
6 expenditure prong is at issue.

7 The State Supreme Court, in *State v. Evans*,
8 modified the expenditure prong standard by
9 establishing what's I think colloquially called
10 the primary purpose test, which asks if the -- is
11 the organization's primary purpose in making
12 expenditures to support candidates or ballot
13 initiatives? If they don't have such a primary
14 purpose, then it cannot be considered a political
15 committee.

16 So in looking at the Foundation's
17 allegations in its Amended Complaint, I think we
18 can see that no electoral political purpose can be
19 imputed to SEIU. And it's both as a matter of the
20 factual allegations and as a matter of law. But
21 beginning with the Foundation's allegations, the
22 Complaint makes a number of references to SEIU's
23 political activity; but again, the primary purpose
24 test does not look to political activity in the
25 broad abstract sense but expressly to electoral

1 activity, which is again having primary purpose
2 supporting candidates for ballot initiatives.

3 So all of the allegations which relate to
4 lobbying, getting members politically active, or
5 advancing the labor movement are entirely
6 immaterial to that question. But even more
7 importantly than that, the Foundation has simply
8 pled itself out of court. If you look at what is
9 really the heart of the Complaint – these are
10 paragraphs 56 through 62 – you --

11 THE COURT: Hang on just a second so I
12 can get there.

13 MR. BERGER: Sure. Mm-hmm.

14 THE COURT: Thank you. Go ahead.

15 MR. BERGER: Okay. If you look at those
16 sections, Your Honor, I think any fair reading of
17 those paragraphs give a very nice distillation of
18 what the Foundation's theory is of how SEIU
19 operates. It alleges that the union's mission,
20 which I think can only be construed as its primary
21 purpose, is to negotiate a favorable collective
22 bargaining agreement with state officers, and that
23 it uses those elections to advance that economic
24 end.

25 Now, quite frankly, the rest of the

1 allegations in the Complaint are merely window
2 dressing on that central allegation. So if you
3 compare what the Foundation has alleged here to
4 one of the cases that's disputed – this is
5 *Freedom Foundation vs. Washington Education*
6 *Association* – that case states that if an
7 organization merely restates the primary political
8 purpose in broad, nonpolitical terms, that purpose
9 will likely be achieved through an election. But
10 as articulated by the Foundation, the occurrence
11 of an election only facilitates but would not
12 accomplish SEIU's goals. Because as it itself
13 alleges, what SEIU really wants, what its mission
14 is to do, is to bargain an economically favorable
15 collective bargaining agreement, and that could
16 only happen after the election in negotiations
17 between the state officers and then with the
18 approval of the state legislature.

19 The Foundation also quotes SEIU's
20 constitution and bylaws quite liberally. And it
21 cites mainly, or perhaps exclusively – I'm not
22 sure off the top of my head – from the section
23 entitled, "strategy for achieving goals," which is
24 Article I, section 6, which conveniently ignores
25 the section immediately preceding it entitled,

1 "the goals." And SEIU's actual goals which are
2 cited there have nothing to do with elections at
3 all. It's about lifting caregivers out of
4 poverty, building worker organizations that are
5 "powerful, sustainable and scaleable,"
6 transforming the health and long-term care of --
7 to ensure quality and access to all. So that's as
8 a matter of the allegations and the documents that
9 are referenced in the allegations.

10 The second point is that SEIU cannot have
11 an electoral, political purpose as a matter of
12 law. And a lot of the dispute in the briefing
13 comes down to how far the holding in that case I
14 alluded to, *Freedom Foundation*, extends. And in
15 that case the Court of Appeals upheld the trial
16 court's determination that WEA's primary purpose
17 was to "enhance the economic and professional
18 security of its members."

19 Now, it's true that that -- that the court
20 there was asked only to decide if the trial court
21 reasonably evaluated WEA's goals, core value,
22 pronouncements, and implementation of
23 pronouncements. But the question for Your Honor
24 is whether that evaluation could come out in a
25 different way for any other bona fide labor union.

1 And I don't believe it could.

2 If you look at what it means to be a labor
3 union, the primary purpose is completely
4 consistent with what the court determined in *WEA*,
5 which is to represent bargaining unit members in
6 dealing with management. And you see this in a
7 number of sources cited in the reply.

8 You have the dictionary definition of
9 unions in Black's Law Dictionary, which mirrors
10 the *Freedom Foundation vs. WEA* language. You have
11 just generally the fact that unions have
12 constitutions and bylaws which constrain how
13 officers can act, even if they sought another
14 purpose.

15 And I think most importantly here – this
16 does relate to the Foundation's allegations – is
17 that most unions, but certainly SEIU here, is
18 designated as a 501(c)(5) organization by the IRS,
19 which the Foundation alleges it is and is
20 truthful. To obtain that designation, the IRS
21 requires a union to have certain primary purposes.
22 And in the reply, those specific purposes are
23 quoted, but they essentially mirror what *WEA*
24 itself determined to have been that particular
25 union's purpose. So by alleging that SEIU is a

1 501(c)(5) organization, the Foundation admits that
2 the federal government already views SEIU to have
3 the same exact primary purposes.

4 Finally I would point Your Honor to the
5 preamble of the FCPA which states that this
6 statute's purpose is, one, to oppose secrecy, and
7 two, to encourage small contributions.

8 Now, we know, based also on the
9 allegations, that the contributions that would be
10 at issue here are inherently small, because again,
11 based on the Complaint's allegations in paragraph
12 69, the Foundation says that these are primarily
13 based on member dues. So, first of all, because
14 these are based on dues, these would be inherently
15 small amounts of money; and secondly, there's
16 really no secrecy involved. The point of the
17 statute is to uncover the source of contributions
18 that are unknown, but the Foundation claims by its
19 allegations that it knows exactly where these
20 contributions come from. It only wants to uncover
21 the personal information associated with those
22 small contributions.

23 THE COURT: At least 83 percent thereof.
24 At least 83 percent is --

25 MR. BERGER: Correct.

1 THE COURT: -- the figure used in the
2 Complaint.

3 MR. BERGER: Correct. And the
4 Foundation alleges that only a portion of those
5 dues in fact go to political activity. So it's
6 really a fraction of the dues.

7 The last point on this question is just a
8 procedural one, whether Your Honor can eliminate a
9 particular theory within one of the -- of several
10 of the Foundation's claims. And SEIU would
11 contend that it can, first because the trial court
12 has the inherent discretion to clarify or sharpen
13 issues before trial.

14 And I would point Your Honor to this exact
15 issue which came before Judge Schaller in that
16 same *Teamsters 117 vs. Freedom Foundation* case
17 where the question was basically the reverse, the
18 dismissal of the contribution prong theory while
19 maintaining the expenditure prong theory. But
20 Judge Schaller held that -- and did dismiss one
21 prong of the claim. And, in fact, she maintained
22 that holding following a motion for
23 reconsideration. So there's really no -- nothing
24 wrong with Your Honor deciding to dismiss a
25 particular theory of the claim.

1 Next, Your Honor, I'd turn to the question
2 of whether SEIU was properly alleged to be a
3 political committee in June 2016. And here I
4 think we have to understand the implications of
5 the Foundation's theory, again, because this is --
6 the status as a political committee turns on an
7 organization's expectations; and at least with
8 respect to the expenditure prong, turns on primary
9 purpose. The Foundation's theory would require
10 the possibility that an organization's purpose
11 varies from month to month or week to week or day
12 to day. Or they -- the Foundation, as I
13 understand it, seems to suggest that at any
14 particular increment it chooses, it can examine
15 the primary purpose. But I would submit that one
16 cannot inherently -- inherently, one cannot
17 determine an organization's primary purpose at
18 that granular, incremental level.

19 Now, the Foundation, in its response,
20 cites SCPA provisions which suggest an
21 organization could be a political committee for
22 three weeks or less before an election. And
23 that's absolutely true. But when you're looking
24 at that organization, you're still examining its
25 purpose with reference to the entire election

1 cycle; it's just that there's only a very small
2 slice of the election cycle where it existed. And
3 so that's not inconsistent with a broader
4 viewpoint at all.

5 The Foundation also cites a PDC regulation
6 on out-of-state political committees which
7 suggests that an out-of-state character or
8 political committee can be implicated by the level
9 of expenditures at any time, and so the
10 Foundation, I believe, requires on the fact that
11 at any time the out-of-state character can change.
12 But even in that instance, it's only the out-of-
13 state nature of the political committee that could
14 change at any time. Whether the committee is a
15 political committee in the first instance is
16 itself still a holistic determination.

17 And finally, Your Honor, I would point to
18 the cases that are at issue here, which are *Utter*
19 and *Freedom Foundation*, the two cases that have
20 been previously discussed. The language that the
21 Foundation relies upon is, I think, in effect – I
22 might be paraphrasing here – is, looking at "any
23 relevant time period." So under the Foundation's
24 theory, that would -- those words allow them to
25 look at really any increment, no matter how small.

1 But what's important to notice is that it says
2 "any relevant time period."

3 So these quotes just beg the question now,
4 what is a relevant time period? And I think, as
5 I've explained here, the relevant time period
6 cannot be anything less than an election cycle or
7 a year.

8 Finally, Your Honor, there's the question
9 of attorney's fees. The plain language of the
10 statute, at least as it existed at the time the
11 Complaint was filed, said that a plaintiff is
12 entitled to be reimbursed by the state. So it's
13 not proper for the Foundation to ask for
14 attorney's fees from the Defendant. If the
15 Foundation wanted to -- subsequent to this action,
16 if it were successful, to seek reimbursement from
17 the State, that would be one thing. But it's not
18 proper to request fees here in this action
19 necessarily from Defendants. It's not a --
20 they're not entitled to that under the statute.
21 And I don't believe that the Foundation disputes
22 this point in its response.

23 So with that, I am happy to answer any
24 questions that Your Honor may have.

25 THE COURT: I don't have any questions.

1 Thank you.

2 Mr. Stahlfeld?

3 MR. STAHLFELD: Good morning again,
4 Your Honor.

5 THE COURT: Good morning.

6 MR. STAHLFELD: And for the record,
7 Eric Stahlfeld representing the
8 Freedom Foundation. SEIU spends millions of
9 dollars every year on political activity. And in
10 June of '16, they actually spent over half of
11 their total revenue strictly on political
12 activity, yet they're claiming they are not a
13 political committee.

14 They have two basic arguments here. The
15 first is procedural; it's the ten-day language.
16 They had cited to Exhibits A and Exhibits B from
17 actually their April motion. This is now their
18 fourth motion to dismiss. And I found it very
19 helpful to go back and look at that language.

20 There are have two points here. The
21 language was actually changed in 2018. So, for
22 example, in their footnote 4, they suggest – and
23 we agree – that the intent of the Legislature was
24 not to change anything at all in 2018. But what
25 did happen in 2018 is, the requirement

1 specifically for the government to take action
2 within ten days was deleted. That's the old
3 section .765(4)(a)(iii).

4 What that means is that, currently, with
5 there still being a ten-day language -- a ten-day
6 period, there is never a starting point for the
7 citizen to take action, because there is no time
8 limit for the government on the ten days.

9 The language which is the same is (ii) in
10 the prior statute, which says -- this is one of
11 four requirements for standing. Subsection (ii)
12 says,

13 "The person has thereafter further
14 notified the attorney general and the
15 prosecuting attorney that the person will
16 commence a citizen's action within ten days
17 upon their failure to do so."

18 That is still in the citizen's action
19 statute. That is the only reference to ten days
20 in the current citizen's action statute. You can
21 go to Exhibit A, and it's a new section 16 in the
22 statute. It's on page 26 of their Exhibit A. The
23 change on this is that instead of it being the
24 attorney general and the prosecuting attorneys,
25 it's the attorney general, if appropriate, and the

1 Public Disclosure Commission. But the critical
2 language referencing a ten-day period is only in
3 that section.

4 What that shows is that, in the existing
5 law as applied in this case pre the current change
6 is, that language was just a notice provision. So
7 for example, the person has further notified the
8 attorney general and the prosecuting attorney that
9 the person will commence a citizen's action within
10 ten days upon their failure to do so. That is
11 just a notice. It has no --

12 THE COURT: A notice to the attorney
13 general --

14 MR. STAHLFELD: A notice to the attorney
15 general and -- correct --

16 THE COURT: Okay.

17 MR. STAHLFELD: -- okay?

18 The plain language -- and we can always
19 argue the plain language says something and
20 everybody will disagree on what it says. But the
21 plain language, the subject and the verb, the
22 subject is "the person," and the verb is "notify."
23 That is what the requirement is in subsection
24 (ii). The person has to notify.

25 The rest of it is describing what that

1 notice says. And the notice is to tell the
2 attorney general or the prosecuting attorney of,
3 say, Lincoln County, which probably hasn't ever
4 seen one of these citizen actions, that you have
5 ten days to do something.

6 SEIU 775 says, there's no point in telling
7 the Lincoln County prosecuting attorney you have
8 ten days. That is incorrect. The point is to
9 tell the government entity that if they want to
10 control the litigation -- and the *Evergreen*
11 *Freedom Foundation vs. NEA* case said, if the
12 prosecuting attorney or the AG takes action within
13 those ten days, they control the litigation and
14 the citizen's action cannot proceed.

15 The notice tells them, if you want to
16 control that litigation, you have no more than ten
17 days to do that. That is a clear, obvious point
18 of what the Legislature was saying in the prior
19 statute that -- or in the statute right now. That
20 is how it has always been read by every court for
21 43 years. This is a provision requiring the
22 citizen to notify the government. And that's all
23 that section says. That's -- in *Evergreen*, they
24 talk about, what are the three requirements. It's
25 to notify the government. That is the subject and

1 the verb.

2 The opening brief, page 7, note 5, admits
3 that this is the clear meaning of that section.
4 They then have to go and make an additional
5 argument, which is, without commanding the citizen
6 to act consistently with the notice. That --
7 that -- there's nothing unusual with that. They
8 try to argue landlord tenant law. I've been
9 practicing landlord tenant law for 20 years,
10 Your Honor, and I can tell you, there's three-day
11 notices and ten-day notices and all kinds of
12 notices. And the landlord does not have to act in
13 compliance with them.

14 There's case law. You say three-day notice
15 to pay rent and vacate; if you don't, do I have to
16 act on that? I can even accept rent subject to
17 never fully accepting the full rent, and I can
18 delay for as long as I want, up to six years on a
19 statute of limitations on a written contract. But
20 there's nothing which says that I have to act as
21 the three-day notice to pay rent says.

22 In the Colorado case which they cited, the
23 language is entirely different. It says you must,
24 within 30 days of the decision, take action.
25 That's not at all what the Legislature wrote here.

1 If they wanted to have -- in 1975, if they wanted
2 to make that provision, they could have done it
3 very easily. If, in 2005 when they said, let's
4 put a two-year statute of limitations on it, the
5 appropriate place to put that statute of
6 limitations would have been as part of this
7 hypothetical, never before enunciated ten-day
8 period.

9 It really is plain on the language. When
10 you look at the four requirements, notified the
11 prosecuting attorney and then 45 days; provide
12 notice to the attorney general that they have ten
13 days to continue to control the litigation. The
14 attorney general and the prosecuting -- or the
15 third is, the attorney general has in fact -- in
16 fact failed. I mean, it's referring back to the
17 notice that was there. It's the same notice, a
18 ten-day notice period. It's in fact failed to
19 bring the action within the ten days that they
20 still have to control the litigation against the
21 entity that's violating the public records -- or
22 the public disclosure -- Fair Campaign Practices
23 Act.

24 Now the fourth is, you have a two-year
25 statute of limitations on this. Those

1 requirements follow. It may be a bit clunky, but
2 it's still exactly logical and makes sense. The
3 Reply at page 3, line 1, says -- the top of it
4 says, there's a concordant duty to act pursuant to
5 the notice. There is no such duty. The
6 Legislature -- the language does not say you must
7 do it within ten days. It doesn't say you must do
8 it within 30 days of a decision. It says you must
9 notify. It used to say the prosecuting attorney
10 has to take action within ten days.

11 None of the courts have -- I mentioned this
12 earlier. There have been -- it's been part of the
13 legislation for, I believe, 43 years. No court
14 has ever articulated a ten-day statute of
15 limitations on this. That would be an incredibly
16 short timeframe. The closest that I can think of
17 is the Land Use Petition Act, which is a 21-day
18 notice. And that is very clear. The language is
19 entirely different in LUPA. It makes it clear
20 that there is an administrative decision, and one
21 must, within 21 days or if it's mailed to you,
22 within 24 days make a decision. Imposing a
23 ten-day language or a ten-day requirement on such
24 vague language just simply makes no sense.

25 We have gone through and briefed the

1 legislative history. If I understand it
2 correctly, there was no challenge in the reply
3 brief or this morning to that. The language
4 consistently all the way through has been such
5 that the notice provision is to let the attorney
6 general or let the prosecuting attorney know that
7 they have ten days to continue to control the
8 dispute.

9 Lastly, we -- this will be 6, so facts
10 outside the complaint can be considered. And my
11 understanding is that practice by the attorney
12 general's office was frequently -- if they thought
13 the ten days was too short, they would ask for an
14 extension of time. And my understanding is that
15 that has frequently been given to them. If that
16 is in fact the case, that suggests that this
17 cannot be a statute of limitations requiring a
18 ten-day notice, because that is an agreement
19 between the attorney general and the
20 Freedom Foundation or the citizen's action which
21 does not affect -- and is not a -- the Defendant
22 is not a party to that agreement.

23 So the party could say, wait; I didn't
24 agree to that. And in practice what that means is
25 that the person bringing the complaint or the

1 attorney general would never be able to agree to
2 allow extra time for the attorney general's
3 office, or what is now the Public Disclosure
4 Commission, to take a look at it and say, hey, you
5 know, we're swamped right now. We've got a lot of
6 stuff. Can you give us another two weeks.

7 So if the interpretation creatively come up
8 with by 775 is in fact the rule of law, that will
9 never be possible. That would not be a wise rule
10 to put into practice.

11 Do you have any further questions on the
12 ten days?

13 THE COURT: No thank you.

14 MR. STAHLFELD: Shifting over to are
15 they a political committee, complaint paragraph 61
16 was one of the ones that supposedly proves that we
17 argued our way out of a cause of action. 61 says
18 SEIU's mission is substantially advanced by
19 favorable election outcomes. That comes pretty
20 much directly from *State v. Evergreen*
21 *Freedom Foundation*, the 111 Wn. App. at 600, which
22 is how the court is to look at whether or not an
23 otherwise not necessarily political committee is
24 in fact a political committee. The *BIAW* on its
25 face did not appear to be a political committee,

1 but you take a look and say, hey, in fact, are
2 they a political committee.

3 And *Evergreen Freedom Foundation* was pretty
4 much the leading case on this. And at 600 the
5 court said that there's a nonexclusive list of
6 analytical tools the court may use. And (1) is,
7 "the content of the stated goals and mission of
8 the organization." Okay. Fair enough. (2) is,
9 "whether the organization's actions further its
10 stated goals and mission." And that is exactly
11 what 61 -- what paragraph 61 says.

12 We meet item (2) to show it is a political
13 committee, because its goals and missions are
14 substantially advanced by favorable election
15 outcomes. That is not an indication that we lose;
16 it's an indication that we prevail.

17 The basic thrust of the Foundation's
18 Complaint is that everything SEIU does is
19 inherently political. The Supreme Court's recent
20 decision in *Janus* suggested that even negotiating
21 a contract with the government is inherently
22 political. So if their purpose is to negotiate a
23 better contract with the government, that is
24 inherently political speech.

25 The point of the primary purpose test, as

1 decided by Division II on -- I think it was
2 September 5th in the *State v. Grocery*
3 *Manufacturers Association*, I believe -- it was a
4 PDC case that you maybe noticed because there was
5 a \$6 million penalty imposed on the Association.
6 The court there said, the point of the primary
7 purpose test is a First Amendment claim.

8 So what is the First Amendment claim that
9 SEIU has? How much money can they spend before
10 they have to go through and comply with the
11 disclosure requirements that the PDC says?

12 In the *Evergreen Freedom Foundation* case,
13 the Court of Appeals case, the analytical tools,
14 we have these tools. You can take a look at their
15 goals. And if the goals aren't political, that's
16 a strike against them being a political committee.
17 But on the same page, the court says,

18 "If the activities reveal that a
19 majority of its efforts are put towards
20 electoral political activity, the fact-
21 finder may disregard the organization's
22 stated goals to the contrary."

23 That is what is significant about the
24 June 2016 argument. In that month SEIU spent a
25 majority of its money towards political activity,

1 supporting the Initiative 1501. Looking at what
2 the First Amendment says, when the entity has
3 spent a majority of its money on political
4 activity, I mean, directly promoting an initiative
5 of the people, the court can disregard whatever
6 the stated purposes are.

7 The question -- and the only challenge, if
8 I understand it correctly, from SEIU 775 is that
9 the timeframe, that one month, is inappropriate.
10 Well, as a practical matter, political committees
11 report on a monthly basis. They certainly can
12 report on a much shorter period when an otherwise
13 nonpolitical entity becomes political, the
14 wholesale manufacturers -- or wholesale -- the
15 *Grocery Manufacturers* case, you know, had that
16 base, at what point do you become a political
17 committee.

18 *BIAW* had the same question. You certainly
19 can become a political committee very close to the
20 end of the year, all right, you or of the election
21 cycle. Otherwise a political committee can say,
22 wait, this issue is important to us. And if they
23 suddenly spend a lot of money, they do become a
24 political committee, and they are required to
25 report. There is nothing unusual about that.

1 The courts, when they look at this, say
2 it's the factfinder that makes the determination.
3 That is correct. It's not a 12(b)(6) question;
4 it's, what does the factfinder -- looking at all
5 of the facts that have been discovered throughout
6 interrogatories, depositions, whatever, the court
7 has to act as a factfinder and determine what is
8 the appropriate time.

9 This is not the appropriate time. But
10 certainly there is nothing unusual and inherently
11 impossible about a one-month period as a matter of
12 law that says that you cannot consider this
13 timeframe. It certainly is possible, and it
14 certainly is appropriate. But the determination
15 for that, ultimately, will be a question of fact
16 for the factfinder and not determined on a
17 12(b)(6) motion.

18 There's one other point on this. The
19 12(b)(6) motion actually moves to dismiss claims.
20 And I understand Judge Schaller said, on the
21 *Teamsters 117*, that we're limited to one of the
22 two prongs. And we respectfully disagree and
23 ask the --

24 THE COURT: So do I.

25 MR. STAHLFELD: Okay. Thank you,

1 Your Honor.

2 THE COURT: So I'll rule on that.

3 MR. STAHLFELD: Okay. They -- they will
4 be a political committee. And I would also note
5 that *Teamsters 117's* lawsuit was permitted to
6 proceed, which suggests that the argument that no
7 labor union can possibly ever be a political
8 committee is overreaching considerably.

9 I am not entirely sure I understood the
10 argument about 83 percent of the money in the
11 Complaint. And I apologize. I couldn't find
12 where it was alleged, so I'm not quite sure what
13 it was referring to, so I don't know that I can
14 respond unless you have a specific question about
15 that.

16 THE COURT: I don't.

17 MR. STAHLFELD: Okay.

18 Again, SEIU inherently is political in what
19 their activity is, even in negotiating contracts
20 with the government. They spend incredible
21 amounts of money, millions of dollars. They do
22 not report as a political committee.

23 The Complaint seeks to go through and
24 establish just how much, just when, and perhaps it
25 will only be for June if the stated purposes

1 really are not sufficient to show that those
2 efforts are something other than political.

3 The Complaint paragraph 100 says that SEIU
4 has restated its primary political purpose in
5 broad, nonpolitical terms. I mean, that's
6 essentially challenging whether the purpose is
7 correct.

8 In paragraph 123, electoral political
9 activity – this is at the top of page 16 – is one
10 of SEIU's primary purposes. So to the extent
11 they've argued that this is political activity,
12 not electoral political activity, that is not what
13 the Complaint alleges. This is a political
14 committee, certainly for June of 2016 and much
15 more broadly. Because of all of the political
16 activities they spend, the Complaint should be
17 allowed to proceed, and we ask the court to deny
18 their motion to dismiss.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Berger.

22 MR. BERGER: Thank you, Your Honor.

23 I think the -- I guess there is at least
24 one point where we agree on a procedural issue if
25 I understood counsel correctly. He said that the

1 language is plain. And it is. But what counsel
2 seems to suggest is that the language is plain as
3 long as we move it -- we move the critical terms
4 to where we want it to be. And I think, if I
5 heard counsel correctly state what subsection (2)
6 says, he said something to the effect of, we will
7 sue if you officers do not sue within ten days.
8 But that's precisely what subsection (2) does not
9 say. It says I, citizen, will sue within ten days
10 if you officers do not. So there's just simply no
11 canon of construction that allows you to rearrange
12 the statute as you see fit, moving critical terms
13 from one part to the other.

14 It's also interesting that counsel cited
15 caselaw. And counsel is correct that there --
16 well, I'm sorry. Counsel is not correct that
17 caselaw has agreed for the past 40 years on how
18 this is constructed. In fact, no court has simply
19 considered how the language in question is
20 constructed. But the case *Evergreen*
21 *Freedom Foundation* did helpfully summarize the
22 requirements and dicta.

23 In that case what the Court of Appeals did
24 is impose a requirement even more restrictive than
25 what SEIU is arguing here. What it says was,

1 the -- I can find the precise language, and
2 perhaps it's helpful that I do, because this is
3 cited in our brief. Okay.

4 "Citizen will give notice that it will
5 file a citizen suit within ten days if the
6 state took no action within that time."

7 So in that instance, the court is saying
8 that the citizen has a mere ten days that's
9 concurrent with the -- with this official's time
10 to act. Now, I think a fair reading of the plain
11 language suggests that the failure of the
12 officials is defined by its own ten-day period.
13 But whether we're talking about a concurrent ten
14 days or a successive ten days, there's no question
15 that courts of this state that the -- in fact, the
16 only court to even consider this language
17 considered the citizen's time to act to be time
18 limited. So I think it is a -- it's not
19 determinative, but it is quite helpful to look at
20 the caselaw here.

21 It's also, I think, interesting that
22 counsel cited to the 2018 changes to the law,
23 because while he is perhaps correct that there is
24 no longer a ten-day requirement for the state
25 officials to act, what does remain -- when the

1 Legislature had time to consider what changes to
2 make in the statute, it maintained the relevant
3 language here. And I'm quoting from their -- or
4 the -- this is in footnote 4 of SEIU's opening
5 brief, RCW .17A.775(3).

6 "To initiate the citizen's action,
7 after meeting the requirements under
8 subsection (2) of this section, a person must
9 notify the attorney general and the commission
10 that he or she will commence a citizen's action
11 within ten days if the commission does not take
12 action or, if applicable, the attorney general
13 does not commence an action."

14 So to the extent that 2018 changes are
15 relevant and the action here was commenced before
16 that time, it only further demonstrates that, upon
17 reflection, the Legislature decided to maintain
18 the language creating a ten-day window for the
19 citizen to act.

20 Counsel also points to legislative history
21 and notes that I did not myself cite to that. And
22 that's true, but I think it's only because counsel
23 puts the cart before the horse. The clear caselaw
24 in Washington says that you only consider
25 legislative history if the language is ambiguous.

1 And counsel is -- and I agree that the language is
2 not ambiguous. And so the question is, how do you
3 read this unambiguous language.

4 Secondly, even counsel's own discussion of
5 the legislative history only points to silence in
6 the record about why this particular change was
7 affected. So there's really nothing enlightening
8 about legislative history, except I would say that
9 as counsel's -- or as the Foundation's response
10 brief noted, when the changes were affected in
11 1975, it was as a result of a compromise between
12 the House, which wanted to remove the citizen's
13 suit provision entirely, and the Senate, which
14 wanted to maintain it.

15 So what they came to was a compromise which
16 affected a number of changes, imposing new
17 requirements and burdens on citizen actors. So to
18 the extent that this is considered a burden, which
19 is not much of one, on a potential citizen actor,
20 it's entirely consistent with the other admitted
21 changes to the act in 1975.

22 I'd also point out that it is not the case
23 that this ten-day window is something that's set
24 in stone at a particular time. It's entirely, as
25 mentioned in my opening statement, at the

1 discretion of the citizen plaintiff when to bring
2 it, at least within that two-year period. There's
3 no limitation on when the ten-day notice can be
4 issued. And it doesn't have to be issued
5 immediately after the completion of the initial
6 45-day period.

7 Counsel also referred to what the attorney
8 general has done in the past as a matter of
9 practice. But that would -- but the -- the period
10 that the counsel is referring to is the attorney
11 generally's request for an extension of their own
12 ten-day window. That doesn't change the fact that
13 under SEIU's, and I think the plain language
14 reading, upon the failure of the attorney general
15 or the county prosecutor to act, whether it's
16 within ten days or within however many -- whatever
17 period is agreed upon to be extended, the citizen
18 then, after that fact, has ten days to act. And
19 that's not contested at all.

20 Now, turning to the question of the
21 expenditure prong, the case cited that we keep
22 referring back to, *Evergreen Freedom Foundation*,
23 also said that if an election merely facilitates
24 an otherwise legitimate nonpolitical objective,
25 then that's not part of an entity's primary

1 purpose. And I think again, giving a fair
2 construction to the paragraphs 57 through 61, what
3 you see is an allegation of what SEIU's real
4 primary purpose is.

5 Now, here for the first time counsel has
6 made quite what I would say shocking argument that
7 it doesn't even need anymore, in light of *Janus*,
8 to allege that an entity has an electoral
9 political activity. It can only now allege that
10 it has a political activity, which even
11 considering *Janus*, I don't think *Janus* has, in any
12 regard, changed the definition of the primary
13 purpose test under *State v. Evans*.

14 But also I would point out to the
15 implications of what counsel is suggesting, that
16 if all public sector unions have an inherently
17 political purpose, then they -- and they are
18 therefore all inherently political committees,
19 then why do we even need a primary purpose test at
20 all? This just flies in the face of the caselaw
21 that's been developing in this state with respect
22 to the primary purpose.

23 And so I believe, Your Honor, I have
24 already addressed the points that counsel has made
25 with respect to the particular SCPA provision

1 believed to indicate that there is a
2 month-to-month week-to-week change of purpose.
3 Again, the provision that was alluded to does
4 suggest that an entity can become a political
5 committee within three weeks before an election,
6 but it doesn't suggest that the reference point
7 for determining the purpose is anything other than
8 a full election cycle.

9 So, again, I don't see that as a basis for
10 allowing a -- for zeroing in on a particular
11 timeframe that's convenient for the plaintiff for
12 determining a political committee status.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Well, the parties agree that the provision
16 of the then-applicable statute is plain and
17 unambiguous. The court interprets the provision
18 of the statute specifically referring to the
19 citizen having an obligation thereafter to further
20 notify the attorney general and the prosecuting
21 attorney that the person will commence an action
22 within ten days upon failure to do so -- the court
23 considers that statute as a notice statute, notice
24 to the attorney general and the prosecuting
25 attorney. It does not result in an affirmative

1 obligation or duty or requirement on the part of
2 the person to take action within ten days of that
3 notification. So the court denies the motion to
4 dismiss based upon the argument that the plaintiff
5 is procedurally barred.

6 The court also rules that the issue of
7 whether SEIU is a political committee is a
8 determination for the factfinder. So the court
9 denies the motion to dismiss based upon that
10 argument. The court declines the invitation or
11 the motion to dismiss the contribution prong, not
12 withstanding Judge Schaller's ruling in the case
13 that was before her.

14 The court does find that in the event
15 Freedom Foundation were to prevail on any cause of
16 action, would they be entitled to collect
17 attorney's fees from SEIU, that's not contemplated
18 by the statute, and so they can't get attorney's
19 fees.

20 So I will allow the parties to draft an
21 order if that's what they want to do this morning.
22 And I'm going to be here for another 15 minutes or
23 so before lunch. But if you can't agree on
24 language in an order, please note the matter up
25 for presentation.

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Thank you, everyone.

MR. IGLITZIN: Thank you, Your Honor.

MR. STAHLFELD: Thank you.

(Conclusion of the November 9, 2018, Proceedings.)

SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

Hon. James J. Dixon, Judge

Freedom Foundation, a)	
Washington nonprofit)	
organization, in the name of)	
the State of Washington,)	
	)	Case No. 18-2-00454-34
Plaintiff,)	
	)	REPORTER'S CERTIFICATE
vs.)	
SEIU 775, a labor organization;)	
et al.,)	
)	
Defendant.)	

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss

I, Kathryn A. Beehler, CCR, Official Reporter of the Superior Court of the State of Washington, in and for the county of Thurston, do hereby certify:

I reported the November 9, 2018, proceedings stenographically. This transcript is a true and correct record of the proceedings to the best of my ability, except any changes made by the trial judge reviewing the transcript. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and I have no financial interest in the litigation.

Kathryn A. Beehler, Reporter
C.C.R. No. 2248

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX D

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a
Washington nonprofit organization, in
the name of the State of Washington,

Respondent,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION 775, a labor
organization,

Petitioner,

DAVID ROLF, its President; and
ADAM GLICKMAN, its Secretary-
Treasurer,

Defendants.

No. 52726-0-II

RULING DENYING REVIEW

FILED
COURT OF APPEALS
DIVISION II
2019 MAY -2 PM 3:59
STATE OF WASHINGTON
BY 
DEPUTY

Service Employees International Union 775 (SEIU) moves for discretionary review of the superior court's order denying its motion to dismiss. Concluding SEIU fails to demonstrate review is appropriate under RAP 2.3(b)(1) or (2), this court denies its motion.

FACTS

SEIU is a Washington non-profit organization representing long-term care workers. Mot. for Disc. Rev., App. at 34. On December 14, 2016, and September 8, 2017, the Freedom Foundation submitted notices to the Washington Attorney General and relevant county prosecutors alleging SEIU is a political committee, and as such, failed to adhere to the Washington Fair Campaign Practices Act (FCPA). Freedom Foundation submitted second notices to the same authorities about the allegations on February 1, 2017, and October 26, 2017, respectively.

Neither the Washington Attorney General nor county prosecutors filed a FCPA enforcement action against SEIU. On January 19, 2018, Freedom Foundation sued SEIU in Thurston County Superior Court.

SEIU moved to dismiss, arguing the citizen suit was time barred under former RCW 42.17A.765(4)(a) (2012). The superior court denied the motion to dismiss.

ANALYSIS

SEIU moves under RAP 2.3(b)(1) and (2), which allows for discretionary review if:

(1) The superior court has committed obvious error which would render further proceedings useless; [or]

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo of substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2)

Because SEIU cannot identify an out-of-court harm, this court will not consider its motion under RAP 2.3(b)(2). *State v. Howland*, 180 Wn. App. 196, 206-07, 321 P.3d 303 (2014) (“it is evident that a trial court order denying a motion to dismiss . . . is generally

insufficient to satisfy the effect prong” of RAP 2.3(b)(2)), *discretionary review denied*, 182 Wn.2d 1008 (2015).

RAP 2.3(b)(1)

SEIU argues the superior court obviously erred in denying its motion to dismiss because Freedom Foundation’s citizen suit was untimely. Former RCW 42.17A.765, which governs the timeliness of citizen suits, provides:

(4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen’s action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney *that the person will commence a citizen’s action within ten days upon their failure to do so*;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen’s action is filed within two years after the date when the alleged violation occurred.

(Emphasis added.)

The parties agree this case turns on proper construction of former RCW 42.17A.765(4)(a)(ii). SEIU asserts that former RCW 42.17A.765(4)(a)(ii) is an absolute 10-day limitation to file a citizen action. Freedom Foundation, in contrast, understands the subsection as simply a 10-day notice requirement. It contends former RCW 42.17A.765(4)(a)(iv), rather than former RCW 42.17A.765(4)(a)(ii), provides the statute of limitations on the filing of the citizen’s suit.

The superior court agreed with Freedom Foundation:

The court interprets the provision of the statute specifically referring to the citizen having an obligation thereafter to further notify the attorney general and the prosecuting attorney that the person will commence an action within ten days upon failure to do so—the court considers that statute as a notice statute, notice to the attorney general and the prosecuting attorney. It does not result in an affirmative obligation or duty or requirement on the part of the person to take action within ten days of that notification. So the court denies the motion to dismiss based upon the argument that the plaintiff is procedurally barred.

Resp. to Mot. for Disc. Rev., Appendix at 115-16 (Report of Proceedings (RP) Nov. 9, 2018 at 54-55) (emphasis added).

Our courts review questions of statutory interpretation de novo. *Flight Options, LLC v. Department of Revenue*, 172 Wn.2d 487, 495, 259 P.3d 234 (2011). In interpreting statutes, “[t]he goal ... is to ascertain and carry out the legislature’s intent.” *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). This court must give effect to the plain meaning of the statute as “derived from the context of the entire act as well as any ‘related statutes which disclose legislative intent about the provision in question.’” *Jametsky*, 179 Wn.2d at 762 (quoting *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

If a statute’s meaning is plain, this court must give effect to that meaning as an expression of legislative intent. *Blomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017). But if “after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history.” *Blomstrom*, 189 Wn.2d at 390. “A statute is ambiguous if [it is] ‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not ambiguous merely because different interpretations are conceivable.’”

HomeStreet, Inc. v. Department of Revenue, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (quoting *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)), *review denied*, 131 Wn.2d 1020 (1997).

Looking to the statute in question, this court first agrees with Thurston County Superior Court Judge Eric Price's observation, made in a separate action, that subsection (4)(a)(ii) is "clunky." Court Spindle, Petitioner's Statement of Additional Authorities, Exhibit (Ex.) A at 10 (excerpt of RP Feb. 8, 2019 at 72). But looking at section (4)(a) in its entirety, former RCW 42.17A.765(4)(a)(ii) is reasonably interpreted as a notice formality, which in conjunction with former RCW 42.17A.765(4)(a)(iii), reminds the prosecuting attorney and attorney general to act within 10 days after receiving the second notice to retain their right to sue. And former RCW 42.17A.765(4)(a)(iv), not (ii), is the temporal limitation on filing a citizen's action.

And even though subsection (4)(a)(ii) requires a complainant to inform the prosecuting attorney and attorney general that the citizen will file suit "within ten days," there is no requirement in this provision that the citizen actually bring the action within 10 days. The only time limitation is the two year limitation in subsection (4)(a)(iv). SEIU's citations to out-of state cases to support that citizen's failure to act as stated means that he or she waives the right to sue may support that the superior court erred, but they are insufficient to demonstrate that it obviously erred. RAP 2.3(b)(1). Neither is the fact that another superior court interpreted the statutory scheme differently sufficient to show obvious error.

CONCLUSION

SEIU fails to demonstrate review is appropriate under RAP 2.3(b)(1) or (2).

Accordingly, it is hereby

ORDERED that SEIU's motion for discretionary review is denied.

DATED this 2nd day of May, 2019.



Aurora Bearse
Court Commissioner

- cc: Dmitri Iglitzin
Jennifer Robbins
Danielle Franco-Malone
Benjamin Daniel Berger
James Abernathy
Eric R. Stahlfeld
Jennifer Matheson
Sydney P. Phillips
Hon. James J. Dixon

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX E

August 1, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a Washington
nonprofit organization, in the name of the State
of Washington,

Respondent,

v.

SEIU 775, a labor organization,

Petitioner.

No. 52726-0-II

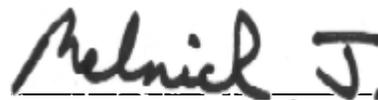
**ORDER DENYING MOTION
TO MODIFY COMMISSIONER'S
RULING**

Petitioner, SEIU 775, filed a motion to modify the commissioner's May 2, 2019 ruling denying review. Respondent, Freedom Foundation, responded to the motion to modify. After consideration, we deny the motion to modify.

IT IS SO ORDERED.

Panel: Jj. Melnick, Glasgow, Crusier.

FOR THE COURT:



Presiding Judge

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX F

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<p><input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: September 6, 2019 Time: 9:00 Judge/Calendar: Hon. James Dixon – Civil Motion</p>
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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

FREEDOM FOUNDATION, a Washington
nonprofit organization, in the name of the State of
Washington,

Plaintiff,

v.

SEIU 775, a labor organization; DAVID ROLF, its
President; and ADAM GLICKMAN, its
Secretary-Treasurer,

Defendants.

No. 18-2-00454-34

**PLAINTIFF’S MOTION TO LIFT
STAY FOLLOWING DENIAL OF
DISCRETIONARY REVIEW BY
DIVISION II COURT OF APPEALS**

I. INTRODUCTION & STATEMENT OF FACTS.

1. This matter is a citizen’s action complaint pursuant to former RCW 42.17A.765, arising from the Defendant, SEIU 775’s (“SEIU 775,” the “Union,” or the “Defendant”), failure to register as a political committee in the State of Washington despite engaging in extensive political activity, including but not limited to activities toward the passage of Initiative 1501. For instance, and as the Plaintiff, Freedom Foundation (the “Foundation” or the “Plaintiff”), has alleged herein, SEIU disclosed that it spent nearly \$6 million in cash expenditures for “political activity and lobbying”

1 in 2016. *See* First Amended Complaint, at ¶21. This sum was up significantly from 2014-2015,
2 where SEIU is alleged to have made a handsome total of approximately \$7 million for “political
3 activities and lobbying.” *Id.*, at ¶28. SEIU used funds set aside from previous years, and in 2016,
4 contributed an astounding 89.5% of the approximately \$2 million spent for the passage of Initiative
5 1501. *Id.*, at ¶84.

6 2. The Foundation initially filed its Complaint in this matter on January 19, 2018, and
7 subsequently filed an Amended Complaint on April 6, 2018.

8 3. The crux of the First Amended Complaint is that despite spending millions of dollars on
9 political activity in 2016 as set forth above – including spending over half of its revenue on political
10 contributions in June, 2016¹ – SEIU 775 has not registered as a political committee in Washington
11 State and therefore has not reported millions of dollars of political activity that it should have
12 disclosed.

13 4. Seeking to avoid inquiry into these egregious allegations, the Union filed, on August 8,
14 2018, a motion to dismiss the Amended Complaint, arguing that Plaintiff’s claims were time-
15 barred because it had not filed the action within ten (10) days of sending the second written notice
16 required by the FCPA, RCW 42.17A.765(4)(a)(ii).²

17 5. On November 9, 2018, this Court rightly denied SEIU 775’s motion to dismiss, finding
18 that the language of RCW 42.17A.765(4)(a)(ii) creates only a ten-day notice period, during which
19

20 ¹ This permits a court to ignore a contrary, non-political articulation of an organization’s stated purpose. *See Evergreen*
21 *Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586, 600; 49 P.3d 894 (2002)). (“If the
22 activities of an organization reveal that a majority of its efforts are put toward electoral political activity, the fact finder
23 may disregard the organization’s stated goals to the contrary.”).

24 ² SEIU 775 asserted these arguments only after deploying other dilatory tactics, such as filing a motion to dismiss on
behalf of the original defendants on February 26, 2018 (but declining to address therein the claims against SEIU 775),
and later filing on April 16, 2018, a baseless motion to dismiss claiming that subsequent amendments to the FCPA
governed the instant action (but not raising any arguments concerning the 10-day language of the former Statute).
Once its previous efforts at unwarranted delay failed, the Defendant then filed its motion to dismiss on the basis of the
10-day language.

1 the citizen complainant is precluded from acting while state officials consider whether or not to
2 bring an FCPA enforcement action – and thereby endorsing the Foundation’s interpretation of the
3 relevant statutory language.

4 6. The Defendant sought to have the Court certify its denial of the motion for discretionary
5 review by the Division II Court of Appeals, but this Court declined to certify the question, in an
6 order dated December 7, 2018.

7 7. As such, the Union then filed a Notice of Discretionary Review on December 10, 2018,
8 indicating that it was purporting to commence discretionary review in the Court of Appeals for the
9 State of Washington, Division II.

10 8. After hearing argument from the parties, a Commissioner of the Division II Court of
11 Appeals, Commissioner Aurora Bearnse, denied discretionary review. The Commissioner’s
12 reasoning is set forth in the Ruling Denying Review, dated May 20, 2019, a true and correct copy
13 of which is attached hereto as **Appendix 1**. In so doing, the Commissioner expressly found that
14 the critical subsection (ii) “...is reasonably interpreted as a notice formality, which in conjunction
15 with former RCW 42.17A.765(4)(a)(iii), reminds the prosecuting attorney and attorney general to
16 act within 10 days after receiving the second notice to retain their right to sue.” **App. 1**, at p. 5.

17 9. Nonetheless, on June 14, 2019, the Defendant filed a Motion to Stay all proceedings in this
18 matter. The Motion to Stay did not request such relief until a date certain, instead effectively
19 requesting a stay until the Motion to Modify was decided, and until appeals in two (2) *separate*
20 matters, now pending in the Washington State Supreme Court, are concluded. *See* Defendant SEIU
21 775’s Motion to Stay, at p. 1 (“Defendant ... requests a stay of all trial court proceedings, pending
22 [Plaintiff’s] Petitions for Direct Review in the cases *Freedom Foundation v. Service Employees*
23 *International Union Political Education and Action Fund*, No. 97111-1, and *Freedom Foundation*

1 *v. Teamsters Local 117 Segregated Fund, et al.*, No. 97109-9, both filed on May 9, 2019, and
2 pending SEIU 775's Motion to Modify the Order Denying Discretionary Review in the instant
3 case, filed on June 3, 2019.'").

4 10. Undeterred by Commissioner Bearse's ruling, the Union also redirected its request for
5 discretionary review to the entire Division II Court of Appeals, by way of its Motion to Modify
6 Commissioner's Ruling, which was submitted to the appellate court on June 23, 2019. The Motion
7 to Modify raised no new arguments in favor of discretionary review, nor for why the Union's
8 interpretation of the Statute in question was more persuasive than the Foundation's.

9 11. On June 28, 2019, the Court granted SEIU 775's Motion to Stay. In the course of doing so,
10 the Court did not indicate that it required a disposition of the pending appeals in order to proceed,
11 and made oral remarks indicating that either party could seek to have the stay lifted, upon a change
12 in the relevant circumstances. At that time, Division II had not yet issued a ruling or otherwise
13 passed upon the Motion to Modify Commissioner Bearse's ruling.

14 12. While the Court did not explicitly articulate its bases for granting the stay sought by SEIU
15 775, undersigned counsel believes that the Court did so primarily due to the pendency, at the time,
16 of the Union' Motion to Modify the Commissioner's Ruling. Indeed, in the event that the Motion
17 *had* been granted, the Division II Court of Appeals would have accepted discretionary review and
18 taken jurisdiction of this matter.

19 13. Subsequently, however, the appellate court instead entered an Order Denying Motion to
20 Modify Commissioner's Ruling, on August 1, 2019 (a true and correct copy of which is attached
21 hereto as **Appendix 2**), thereby confirming that it will not be taking discretionary review of the
22 Defendant's appeal, nor interfering with the due processing of the action by this Court.

23 14. Further, the Washington State Supreme Court has accepted direct review of the
24

1 consolidated appeals referenced in paragraph 9, *supra*, thereby expediting its ultimate review of
2 the trial court rulings contrary to this Court’s analysis.

3 **II. EVIDENCE RELIED UPON.**

4 The Plaintiff relies upon the Order Denying Motion to Modify Commissioner’s Ruling,
5 issued by the Court of Appeals of the State of Washington, Division II, on August 1, 2019 (**App.**
6 **2**), as well as the Ruling Denying Review, issued by Court Commissioner Aurora Bearse, on May
7 2, 2019 (**App. 1**).

8 **III. QUESTION PRESENTED.**

9 1. Should the Court now lift the stay entered on June 26, 2019, in light of the fact that
10 the Court of Appeals has now determined not to take discretionary review of this matter, and has
11 accepted direct review of contrary rulings by the trial courts in related matters?

12 **IV. ARGUMENT.**

13 **A. The Primary Consideration in Support of a Stay No Longer Applies, But the**
14 **Reasons for Expediently Processing This Matter Still Do.**

15 At this time, the Washington Supreme Court has determined that the issues contained in
16 the Foundation’s pending appeals against Teamsters 117 and SEIU PEAFF will be decided on direct
17 review, in a consolidated appeal. *See* Orders, dated August 7, 2019, true and correct copies of
18 which are attached hereto as **Appendix 3**. This strongly suggests that it is this Court’s analysis that
19 will ultimately carry the day on appeal, because the Supreme Court need not expedite review of
20 the contrary rulings, if there is nothing amiss in those rulings below.

21 However, the contingency most directly relevant to the Union’s Motion to Stay, *i.e.*,
22 whether the appellate court will accept immediate review of this matter, has failed. *See App. 2*.
23 The mere possibility that the Supreme Court will disagree with this Court’s interpretation of the
24

1 FCPA is insufficient to justify a continuation of the stay until those matters are finally resolved.³

2 Such would be to the acute prejudice of the Plaintiff and its pending claims, because it is
3 all too common that during the extended course of a lawsuit, not only (i) does the existing evidence
4 become stale (as subject to faulty memories and perhaps no longer relevant), but also, (ii) it
5 becomes significantly more difficult to obtain any additional evidence in the discovery that would
6 subsequently follow the lifting of the stay. At that time (at some unknown point in the future),
7 many of the current employees of SEIU 775 may no longer be in their positions or subject to the
8 subpoena power of the Court, those documents currently retained by the Union may no longer be
9 available, and the contemporary employees may no longer have relevant knowledge concerning
10 the issues in this lawsuit.⁴ At issue in this matter is not just money, but also the political activities
11 engaged in by each employee with respect to the various committees operated by SEIU 775, and
12 why a similar state political committee was not created for passage of Initiative 1501 – it can be
13 anticipated that these activities will be difficult to remember years later. These evidentiary
14 problems can be minimized, if the Court now permits the Foundation to vindicate its right of access
15 to the courts (as contemplated by the statutory remedies of the FCPA) and to conduct discovery in
16

17 ³ The Supreme Court’s Order of August 7 did not address whether the consolidated cases will be consolidated with
18 another pending appeal that the Foundation has brought before the Washington Supreme Court on a petition for direct
19 review; namely, *Freedom Foundation v. Jay Inslee, et al.*, Case No. 97394-6 (the “DSHS Matter”). Similar to the
20 other pending Supreme Court appeals, the DSHS Matter is a citizen’s action, which was dismissed upon the 10-day
21 “statute of limitations” advanced by the Union. The Foundation has requested that this matter be consolidated with
22 the others, but if it is not, then the processing of this matter would have to either: (i) await the resolution of the separate,
23 additional DSHS Matter, as well, or (ii) proceed, and defeat the purpose of having waited for a ruling in the
24 consolidated appeals, because it would be proceeding in the face of another pending appeal that could potentially be
relevant to the Court’s ruling.

⁴ These possibilities are not merely abstract; indeed, SEIU 775 has already seen its President, David Rolf, recently
complete his tenure, which is likely to precipitate greater changes in other personnel at the Union. Subsequent to his
retirement and being dismissed as an individual Defendant in this matter, Mr. Rolf also relocated to Washington, D.C.
The further passage of time before discovery is permitted will only render it more difficult to obtain his testimony on
topics critically relevant to this matter, such as the extensive time that he spent on politics during his tenure as SEIU
President. *See* First Amended Complaint, at ¶¶47-49 (alleging that Mr. Rolf spent 0% of his time on representational
activities in 2014, and 40% of his time on politics that year, 62% of his time on “political activities and lobbying” in
2015, and 22% of his time on “political activities and lobbying” in the year 2016). The Court should not introduce
greater prejudice to the Foundation’s interests than has inevitably already resulted from the passage of time.

1 these proceedings, along with continuing to otherwise diligently prosecute the action. *See Doe v.*
2 *Puget Sound Blood Center*, 117 Wn. 2d 772, 783, 819 P.2d 370 (1991) (“Thus, plaintiff’s right of
3 access to the courts and his concomitant right of discovery must be accorded a high priority in
4 weighing the respective interests of the parties in litigation.”); *see also Smith v. Smith*, 1 Wn. App.
5 2d 122, 134, 16 P.3d 45 (2017) (“First, delaying DVPO proceedings denies plaintiffs their right to
6 meaningfully access the courts. By continuing a DVPO matter until the defendant’s criminal case
7 is resolved, the court prevents a plaintiff from timely receiving her statutory remedy under the
8 DVPA.”).

9 Similarly, it is the very considerations unique to FCPA claims that led the Legislature to
10 enact a relatively short, 2-year statute of limitations for such claims – the nature of political
11 campaigns renders the evidence relevant to such claims necessarily even more transient and
12 fleeting than evidence in the normal litigation context, so much so that the Legislature felt that
13 claims beyond two (2) years old were so difficult to litigate that they should be categorically barred
14 instead. *See* Remarks of Rep. Sam Hunt, prime sponsor of HB 1832, before Senate Government
15 Operations & Elections Committee (3/26/2007);⁵ *see also* Rep. Hunt’s remarks before House State
16 Government & Tribal Affairs Committee (2/21/2007).⁶

18 ⁵ “In essence, it [HB 1832] shortens citizen complaint periods for complaints against campaigns for violations to two
19 years. And, those of us who have been around campaigns know that after two years — if you have an issue
20 campaign, if you have a losing campaign, even a winning campaign — the volunteer staff and folks disperse to
21 various places. This would provide a two-year window for anybody who has a legal complaint against a campaign to
22 present that complaint. It would not impact agencies like the Public Disclosure Commission, which has a five-year
23 period; that would remain.” Available at
24 <https://www.tvw.org/watch/?clientID=9375922947&eventID=2007031127&startStreamAt=1563&stopStreamAt=1630&autoStartStream=true> (last visited June 18, 2019).

21 ⁶ “What we are trying to do is – we talked with Public Disclosure Commission on this and it appears that what we’re
22 trying to do is draft it to the wrong part of the RCW. We are not looking to interfere or to shorten the time that the
23 PDC and – would have to address complaints and issues. We’re more looking at the time for other complaints. And
24 part of the problem is, with a two or four-year election cycle – once you get beyond that period it’s hard to –
especially if you’re a losing campaign – to find your records, you know, who was your treasurer? Where is your
treasurer? That sort of thing. Available at
<https://www.tvw.org/watch/?clientID=9375922947&eventID=2007031127&startStreamAt=1563&stopStreamAt=1630&autoStartStream=true> (last visited June 18, 2019).

1 Indeed, delay itself, and of course the evidentiary prejudice resulting from the present stay
2 of all proceedings (including discovery) in this timely-filed action, are more than sufficient
3 grounds to end the hiatus to which it is presently subject. *See Avant Corp. v. Superior Court*, 79
4 Cal. App. 4th 876, 887 (2000) (*citing Clinton v. Jones*, 520 U.S. 681, 707-08 (1997) (“The
5 complaint was filed within the statutory limitations period – albeit near the end of that period –
6 and delaying trial would increase the danger of prejudice resulting from the loss of evidence,
7 including the inability of witnesses to recall specific facts, or the possible death of a party.”)); *see*
8 *also Landis v. North American Co.*, 299 U.S. 248, 255 (1936). The Court should lift the stay not
9 only to ensure that the Foundation’s claims are not effectively drained of evidentiary support by
10 the passage of time, but also in order to avoid having this matter sitting on its docket for an
11 inordinate amount of time – notwithstanding the Supreme Court’s having accepted review of the
12 matters on appeal, its resolution will likely take over a year or more (totally setting aside
13 contingencies relating to the DSHS Matter). *See Avant Corp.*, 79 Cal. App. at 888 (“Clearly, denial
14 of the stay motion promotes the convenience of the court in the management of its cases.”).

15 During that unknown period of time, the Foundation should not have to entirely stand
16 down, and should be able to prosecute an action that is subject to no time-bar, according to the
17 rulings of this Court and of Division II. At this time, the stay should be lifted, and this matter
18 should proceed onward to a resolution.

19 **B. Plaintiff Can Demonstrate No Prejudice in the Stay Being Lifted.**

20 As the Foundation previously advised the Court in opposing a stay, the law is well-settled
21 that such relief should be supported by some “hardship or inequity” in conducting civil
22 proceedings. *See King v. Olympia Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d 45 (2000). While
23 the Foundation recognizes that the Court nonetheless granted the stay sought by the Union, the
24

1 reasons for a stay have now dissipated, and there is still no basis for finding prejudice in the
2 Defendant’s having to defend. SEIU 775 can point to nothing more than the run-of-the-mill
3 burdens incident to litigation, such as discovery, which is provided for by the Rules because it is
4 required by the very nature of a dispute. There is nothing uniquely burdensome about this
5 litigation; nor are there any unique circumstances for SEIU 775 to make out a case of hardship in
6 support of extending the stay.

7 It is the Union itself that chose to spend millions of dollars directly on political activity,
8 rather than establishing a political committee through which to disclose its contributions and
9 expenditures. Discovery into these matters cannot be called a “hardship or inequity,” however,
10 because here it is nothing more than is called for by the broad, “totality of the circumstances”
11 inquiry to determine whether an entity is a political committee. *See Evergreen Freedom*
12 *Foundation v. Washington Education Association (“EFF”),* 111 Wn. App. 586, 599; 49 P.3d 894
13 (2002). (“[These factors] are intended to reach all relevant evidence, but they are not exclusive.
14 For example, by examining the totality of the circumstances, a fact finder may look at all of the
15 organization’s actions, including those in addition to its stated goals.”) (emphasis added).

16 The only scenario in which discovery would prove unnecessary is if the appellate courts of
17 this State ultimately agree with the Union’s strained interpretation of the former provisions of the
18 FCPA and require dismissal of this suit. *See id.* While that result is certainly *possible*, it is also
19 increasingly unlikely (as the Commissioner and the Washington Supreme Court have already
20 recognized), and the Division II Court of Appeals has determined that the “possible error” it is not
21 likely enough to warrant interfering with the adjudication of this matter in this Court. It is indeed
22 much more likely that none of the Court’s labor will be wasted, and that the consolidated appeals
23 will only vindicate its analysis.

1 **DECLARATION OF SERVICE**

2 I, Jennifer Matheson, hereby declare under penalty of perjury under the laws of the State
3 of Washington that on August 27, 2019, I caused the foregoing Motion to Lift Stay to be filed with
4 the clerk, and caused a true and correct copy of the same to be delivered via email per agreement
5 to the following:

6 Dmitri Iglitzin
7 Jennifer L. Robbins
8 Danielle Franco-Malone
9 Benjamin Berger
10 Schwerin Campbell Barnard Iglitzin & Lavitt, LLP
11 18 West Mercer Street, Suite 400
12 Seattle, WA 98119
Iglitzin@workerlaw.com
Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

13 *Attorneys for Defendants*

14 Dated: August 27, 2019, at Olympia, Washington.

15
16 By: 
17 Jennifer Matheson

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a
Washington nonprofit organization, in
the name of the State of Washington,

Respondent,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION 775, a labor
organization,

Petitioner,

DAVID ROLF, its President; and
ADAM GLICKMAN, its Secretary-
Treasurer,

Defendants.

No. 52726-0-II

RULING DENYING REVIEW

FILED
COURT OF APPEALS
DIVISION II
2019 MAY -2 PM 3:59
STATE OF WASHINGTON
BY 
DEPUTY

Service Employees International Union 775 (SEIU) moves for discretionary review of the superior court's order denying its motion to dismiss. Concluding SEIU fails to demonstrate review is appropriate under RAP 2.3(b)(1) or (2), this court denies its motion.

FACTS

SEIU is a Washington non-profit organization representing long-term care workers. Mot. for Disc. Rev., App. at 34. On December 14, 2016, and September 8, 2017, the Freedom Foundation submitted notices to the Washington Attorney General and relevant county prosecutors alleging SEIU is a political committee, and as such, failed to adhere to the Washington Fair Campaign Practices Act (FCPA). Freedom Foundation submitted second notices to the same authorities about the allegations on February 1, 2017, and October 26, 2017, respectively.

Neither the Washington Attorney General nor county prosecutors filed a FCPA enforcement action against SEIU. On January 19, 2018, Freedom Foundation sued SEIU in Thurston County Superior Court.

SEIU moved to dismiss, arguing the citizen suit was time barred under former RCW 42.17A.765(4)(a) (2012). The superior court denied the motion to dismiss.

ANALYSIS

SEIU moves under RAP 2.3(b)(1) and (2), which allows for discretionary review if:

(1) The superior court has committed obvious error which would render further proceedings useless; [or]

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo of substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2)

Because SEIU cannot identify an out-of-court harm, this court will not consider its motion under RAP 2.3(b)(2). *State v. Howland*, 180 Wn. App. 196, 206-07, 321 P.3d 303 (2014) (“it is evident that a trial court order denying a motion to dismiss . . . is generally

insufficient to satisfy the effect prong” of RAP 2.3(b)(2)), *discretionary review denied*, 182 Wn.2d 1008 (2015).

RAP 2.3(b)(1)

SEIU argues the superior court obviously erred in denying its motion to dismiss because Freedom Foundation’s citizen suit was untimely. Former RCW 42.17A.765, which governs the timeliness of citizen suits, provides:

(4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen’s action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney *that the person will commence a citizen’s action within ten days upon their failure to do so*;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen’s action is filed within two years after the date when the alleged violation occurred.

(Emphasis added.)

The parties agree this case turns on proper construction of former RCW 42.17A.765(4)(a)(ii). SEIU asserts that former RCW 42.17A.765(4)(a)(ii) is an absolute 10-day limitation to file a citizen action. Freedom Foundation, in contrast, understands the subsection as simply a 10-day notice requirement. It contends former RCW 42.17A.765(4)(a)(iv), rather than former RCW 42.17A.765(4)(a)(ii), provides the statute of limitations on the filing of the citizen’s suit.

The superior court agreed with Freedom Foundation:

The court interprets the provision of the statute specifically referring to the citizen having an obligation thereafter to further notify the attorney general and the prosecuting attorney that the person will commence an action within ten days upon failure to do so—the court considers that statute as a notice statute, notice to the attorney general and the prosecuting attorney. It does not result in an affirmative obligation or duty or requirement on the part of the person to take action within ten days of that notification. So the court denies the motion to dismiss based upon the argument that the plaintiff is procedurally barred.

Resp. to Mot. for Disc. Rev., Appendix at 115-16 (Report of Proceedings (RP) Nov. 9, 2018 at 54-55) (emphasis added).

Our courts review questions of statutory interpretation de novo. *Flight Options, LLC v. Department of Revenue*, 172 Wn.2d 487, 495, 259 P.3d 234 (2011). In interpreting statutes, “[t]he goal ... is to ascertain and carry out the legislature’s intent.” *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). This court must give effect to the plain meaning of the statute as “derived from the context of the entire act as well as any ‘related statutes which disclose legislative intent about the provision in question.’” *Jametsky*, 179 Wn.2d at 762 (quoting *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

If a statute’s meaning is plain, this court must give effect to that meaning as an expression of legislative intent. *Blomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017). But if “after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history.” *Blomstrom*, 189 Wn.2d at 390. “A statute is ambiguous if [it is] ‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not ambiguous merely because different interpretations are conceivable.’”

HomeStreet, Inc. v. Department of Revenue, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (quoting *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)), *review denied*, 131 Wn.2d 1020 (1997).

Looking to the statute in question, this court first agrees with Thurston County Superior Court Judge Eric Price's observation, made in a separate action, that subsection (4)(a)(ii) is "clunky." Court Spindle, Petitioner's Statement of Additional Authorities, Exhibit (Ex.) A at 10 (excerpt of RP Feb. 8, 2019 at 72). But looking at section (4)(a) in its entirety, former RCW 42.17A.765(4)(a)(ii) is reasonably interpreted as a notice formality, which in conjunction with former RCW 42.17A.765(4)(a)(iii), reminds the prosecuting attorney and attorney general to act within 10 days after receiving the second notice to retain their right to sue. And former RCW 42.17A.765(4)(a)(iv), not (ii), is the temporal limitation on filing a citizen's action.

And even though subsection (4)(a)(ii) requires a complainant to inform the prosecuting attorney and attorney general that the citizen will file suit "within ten days," there is no requirement in this provision that the citizen actually bring the action within 10 days. The only time limitation is the two year limitation in subsection (4)(a)(iv). SEIU's citations to out-of state cases to support that citizen's failure to act as stated means that he or she waives the right to sue may support that the superior court erred, but they are insufficient to demonstrate that it obviously erred. RAP 2.3(b)(1). Neither is the fact that another superior court interpreted the statutory scheme differently sufficient to show obvious error.

CONCLUSION

SEIU fails to demonstrate review is appropriate under RAP 2.3(b)(1) or (2).

Accordingly, it is hereby

ORDERED that SEIU's motion for discretionary review is denied.

DATED this 2nd day of MAY, 2019.



Aurora Bearse
Court Commissioner

- cc: Dmitri Iglitzin
Jennifer Robbins
Danielle Franco-Malone
Benjamin Daniel Berger
James Abernathy
Eric R. Stahlfeld
Jennifer Matheson
Sydney P. Phillips
Hon. James J. Dixon

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 2

August 1, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a Washington
nonprofit organization, in the name of the State
of Washington,

Respondent,

v.

SEIU 775, a labor organization,

Petitioner.

No. 52726-0-II

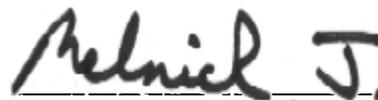
**ORDER DENYING MOTION
TO MODIFY COMMISSIONER'S
RULING**

Petitioner, SEIU 775, filed a motion to modify the commissioner's May 2, 2019 ruling denying review. Respondent, Freedom Foundation, responded to the motion to modify. After consideration, we deny the motion to modify.

IT IS SO ORDERED.

Panel: Jj. Melnick, Glasgow, Crusier.

FOR THE COURT:



Presiding Judge

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 3

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION,	)	No. 97109-9
)	
Appellant/Cross-Respondent,	)	ORDER
)	
v.	)	Thurston County Superior Court
	)	No. 17-2-06578-9
TEAMSTERS LOCAL 117, et al.,)	
)	
Respondents/Cross-Appellants.)	
)	
_____)	

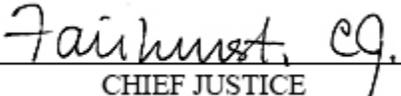
A Special Department of the Court, composed of Chief Justice Fairhurst and Justices Owens, Wiggins, González and Yu, considered at its August 6, 2019, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this Court will retain this case for hearing and decision. The Appellant/Cross-Respondent's motion to consolidate is granted. This case is consolidated with Supreme Court No. 97111-1 - *Freedom Foundation v. Service Employees International Union Political Education and Action Fund*. All further pleadings should be filed under Supreme Court No. 97109-9.

DATED at Olympia, Washington, this 7th day of August, 2019.

For the Court



CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION,	)	No. 97111-1
)	
Appellant/Cross-Respondent,	)	ORDER
)	
v.	)	Thurston County Superior Court
	)	No. 18-2-01731-6
SERVICE EMPLOYEES INTERNATIONAL)	
UNION POLITICAL EDUCATION AND)	
ACTION FUND,)	
)	
Respondent/Cross-Appellant.)	
)	
_____)	

A Special Department of the Court, composed of Chief Justice Fairhurst and Justices Owens, Wiggins, González and Yu, considered at its August 6, 2019, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this Court will retain this case for hearing and decision. The Respondent/Cross-Appellants' motion to consolidate is granted. This case is consolidated under Supreme Court No. 97109-9 - *Freedom Foundation v. Teamsters Local 117, et al.* All further pleadings should be filed under Supreme Court No. 97109-9.

DATED at Olympia, Washington, this 7th day of August, 2019.

For the Court


CHIEF JUSTICE

SEIU 775,

Petitioner

v.

FREEDOM FOUNDATION,

Respondent.

APPENDIX G

EXPEDITE

No Hearing Set

Hearing is set

Date: _____

Time: _____

Judge/Calendar: Dixon

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY**

FREEDOM FOUNDATION, a Washington
nonprofit organization, in the name of the State
of Washington,

Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION 775, a labor organization; DAVID
ROLF, its President; and ADAM
GLICKMAN, its Secretary-Treasurer,

Defendants.

No. 18-2-00454-34

**SEIU 775'S FIRST AMENDED
ANSWER AND COUNTERCLAIM**

Defendant Service Employees International Union 775 ("SEIU 775") by way of answer
hereby admits, denies, and/or states as follows:

I. INTRODUCTION

1. Paragraph 1 contains legal conclusions to which no response is required. To the
extent that a response is required, SEIU 775 asserts that the Fair Campaign Practice Act
("FCPA") speaks for itself.

2. SEIU 775 is without sufficient knowledge to admit or deny the allegations
contained in Paragraph 2 and, on that basis, denies same.

3. SEIU 775 admits Paragraph 3.

4. SEIU 775 denies Paragraph 4.

1 26. SEIU 775’s filing with the Department of Labor speaks for itself. The remainder of
2 Paragraph 26 contains vague and non-specific allegations. Accordingly, SEIU 775 lacks sufficient
3 knowledge to admit or deny those characterizations, and on that basis denies them.

4 27. Paragraph 27 contains vague and non-specific allegations. Accordingly, SEIU 775
5 lacks sufficient knowledge to admit or deny them, and on that basis denies Paragraph 27.

6 28. SEIU 775’s filings with the Department of Labor speak for themselves.

7 29. SEIU 775 admits it made almost \$3,000,000 in expenditures to candidates,
8 initiatives and political committees between 2010 and 2015. SEIU 775 denies Paragraph 29 to the
9 extent that it references “other political committees” in a way that suggests that SEIU 775 is itself
10 a political committee under the FCPA, which it is not.

11 30. Paragraph 30’s allegation concerning “many of those same political organizations”
12 is vague and non-specific. Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny
13 Paragraph 30 and on that basis denies Paragraph 30.

14 31. SEIU 775 denies Paragraph 31.

15 32. SEIU 775 denies that it has “given money” to the election of candidates for
16 Governor and the state legislature. SEIU 775 admits that its employees and officers have at
17 times engaged in activities in support of such efforts. SEIU 775 further admits that, pursuant to
18 RCW 74.39A.270, the governor or his/her designee represents the state in negotiating collective
19 bargaining agreements with individual provides, and that, pursuant to RCW 74.39A.300, the state
20 legislature must approve the funds to be allocated under any collective bargaining agreement
21 negotiated. Paragraph 32 is otherwise denied.

22 33. Paragraph 33’s allegation concerning “partisan groups” and “SEIU-favored
23 candidates” is vague, non-specific, and makes subjective characterizations about the nature of
24

1 organizations and candidates. Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny
2 Paragraph 33 and on that basis denies Paragraph 33.

3 34. SEIU 775 denies that it has financially supported candidates running for election to
4 city council, county executive, and superior court judge positions. Paragraph 34's allegation
5 regarding the creation of an impression is too vague, non-specific and subjective to be admitted or
6 denied and is therefore denied.

7 35. SEIU 775 is without sufficient knowledge to admit or deny the allegations
8 contained in Paragraph 35 and, on that basis, denies same.

9 36. SEIU 775 is without sufficient knowledge to admit or deny the allegations in
10 Paragraph 36 and, on that basis, denies same.

11 37. SEIU 775 admits Paragraph 37.

12 38. SEIU 775 admits that it currently uses its Twitter and Facebook accounts to, in
13 part, encourage voting as well as discuss candidates for election it has endorsed and issues it is
14 advocating. The phrase "encourages political activity" is vague and non-specific. Accordingly,
15 SEIU 775 lacks sufficient knowledge to admit or deny the assertion that SEIU 775 encourages
16 political activity and therefore denies the same. SEIU 775 lacks sufficient knowledge to admit or
17 deny who is reached by the Twitter and Facebook account and on that basis denies that allegation
18 in Paragraph 38.

19 39. SEIU 775 admits that chargeable expenses in 2016 comprised 57% of its
20 expenditures and non-chargeable expenses comprised 43% of its expenditures. SEIU 775
21 otherwise denies the first sentence of Paragraph 39. The second sentence of Paragraph 39 is too
22 ambiguous to be admitted or denied and is therefore denied.

1 40. The first sentence of Paragraph 40 makes a subjective characterization.
2 Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny the first sentence of
3 Paragraph 40 and on that basis denies it. SEIU 775 denies the second sentence of Paragraph 40.

4 41. SEIU 775 admits that chargeable expenses in 2012 comprised 60% of its
5 expenditures and non-chargeable expenses comprised 40% of its expenditures and otherwise
6 denies the allegations in Paragraph 41.

7 42. SEIU 775 denies Paragraph 42.

8 43. SEIU 775 denies Paragraph 43.

9 44. SEIU 775's Constitution and Bylaws speak for itself.

10 45. SEIU 775's Constitution and Bylaws speak for itself.

11 46. SEIU 775's Constitution and Bylaws speak for itself.

12 47. SEIU 775's filing with the Department of Labor speaks for itself.

13 48. The first sentence of Paragraph 48 contains a subjective characterization.
14 Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny that characterization, and on
15 that basis denies the first sentence of Paragraph 48. With regard to the second sentence of
16 Paragraph 48, SEIU 775's filing with the Department of Labor speaks for itself.

17 49. SEIU 775's filing with the Department of Labor speaks for itself.

18 50. SEIU 775's Constitution and Bylaws speak for itself.

19 51. SEIU 775's statement to the Department of Labor speaks for itself.

20 52. SEIU 775's statement to the Department of Labor speaks for itself.

21 53. SEIU 775's statement to the Department of Labor speaks for itself.

22 54. The 2013 Collective Bargaining Agreement between SEIU 775 and its staff union
23 speaks for itself.

1 55. Collectively bargained agreements between SEIU 775 and its staff union that are
2 more recent than the 2013 Collective Bargaining Agreement referenced in Paragraph 54, should
3 they exist, speak for themselves.

4 56. SEIU 775's Constitution and Bylaws speak for itself.

5 57. SEIU 775 admits it views engaging in electoral political activity as one among
6 many strategies employed to attain its legitimate broad nonpolitical goals. Paragraph 57 is
7 otherwise denied.

8 58. Paragraph 58's allegation concerning SEIU 775's "actions" is vague and non-
9 specific. Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny Paragraph 58 and,
10 on that basis, denies Paragraph 58.

11 59. SEIU 775 denies that Paragraph 59 is a complete, comprehensive or accurate
12 statement of SEIU 775's current legitimate broad nonpolitical goals. SEIU 775 admits that it
13 wants its bargaining unit members to receive favorable compensation and benefits from their
14 employers and that it seeks to negotiate favorable collective bargaining agreements for Individual
15 Providers with the Governor or the Governor's designee as well as favorable collective bargaining
16 agreements with private sector employers. SEIU 775 admits that RCW 74.39A.300 governs
17 funding for the individual provider collective bargaining agreement.

18 60. SEIU 775 admits that, consistent with Article 1.6 of its Constitution and Bylaws, it
19 has supported the election of pro-worker governors and other legislators who are, among a
20 number of things, responsible for negotiating and approving individual providers' collective
21 bargaining agreements, as one among many strategies it has employed to achieve its legitimate
22 broad nonpolitical goals of improving the lives of caregivers and their families. Paragraph 60 is
23 otherwise denied.

1 61. SEIU 775 admits that one or more of its legitimate broad nonpolitical goals may be
2 advanced by the election of pro-worker candidates for political office. Paragraph 61 is otherwise
3 denied.

4 62. SEIU 775 denies Paragraph 62.

5 63. Secretary-Treasurer Adam Glickman's email speaks for itself.

6 64. SEIU 775 denies Paragraph 64.

7 65. President David Rolf's email speaks for itself.

8 66. Secretary-Treasurer Adam Glickman's letter speaks for itself.

9 67. SEIU 775's Constitution and Bylaws and the Service Employees International
10 Union's Constitution and Bylaws speak for themselves. Paragraph 67 is otherwise denied and
11 SEIU 775 specifically denies that the entity referred to as SEIU Council 14 is a political
12 committee within the meaning of the FCPA or that SEIU 775 earmarks a specific percentage of
13 funds deriving from member dues for electoral political activity in Washington.

14 68. SEIU 775 admits that the SEIU Political Education and Action Fund PAC has at
15 times filed disclosure reports with the PDC as an out-of-state political committee. Paragraph 68 is
16 otherwise denied.

17 69. SEIU 775 admits Paragraph 69.

18 70. SEIU 775 denies Paragraph 70.

19 71. Paragraph 71 is too vague and subjective to be admitted or denied and is therefore
20 denied.

21 72. SEIU 775's Constitution and Bylaws speaks for itself.

22 73. SEIU 775's Constitution and Bylaws speaks for itself.

1 74. Paragraph 74 contains a subjective characterization that cannot be admitted or
2 denied and, accordingly, SEIU 775 denies same.

3 75. The membership packet referenced in Paragraph 75 speaks for itself.

4 76. The “Notice” referenced in Paragraph 76 speaks for itself.

5 77. SEIU 775 admits that the 2018 Beck Hudson Notice says that for individuals who
6 (1) are in a bargaining unit subject to an agency fee requirement and (2) object to paying the full
7 fee, the objector agency fee is 57% of the full agency fee. The remainder of Paragraph 77 is
8 denied. The second sentence is supposition and speculation that can be neither admitted nor
9 denied and is therefore denied.

10 78. Paragraph 78 is denied.

11 79. SEIU 775 admits that, at the time of the First Amended Complaint, its website
12 contained a list of endorsements for 2018 Washington federal, state, and local elections and ballot
13 initiatives and a section explaining the passage of SB 6199, which relates to Consumer Directed
14 Employer legislation. To the extent Paragraph 79 refers to prior versions of SEIU 775’s website,
15 it is vague and non-specific. Accordingly, SEIU 775 lacks sufficient knowledge to admit or deny
16 allegations concerning prior versions of its website and on that basis, denies such allegations.
17 Paragraph 79 is otherwise denied.

18 80. Paragraph 80’s allegation concerning officers’ speech about “extensive
19 involvement in political activities” is vague and non-specific. Accordingly, SEIU 775 lacks
20 sufficient knowledge to admit or deny Paragraph 80, and on that basis, denies Paragraph 80.

21 81. The *Seattle Times* article and the articles referenced by footnote speak for
22 themselves. SEIU 775 denies Paragraph 81 to the extent it offers these articles for the truth of, or
23 any subjective characterizations of, facts alleged therein.

1 82. SEIU 775 denies Paragraph 82.

2 83. SEIU 775 denies Paragraph 83.

3 84. SEIU 775 denies the first sentence of Paragraph 84. Regarding the second
4 sentence of Paragraph 84, the documents referenced therein speak for themselves.

5 85. The phrase “taken explicit action to indicate” is too vague and non-specific to be
6 admitted or denied; on that basis, SEIU 775 denies Paragraph 85.

7 86. The phrase “taken explicit action to indicate” is too vague and non-specific to be
8 admitted or denied; on that basis, SEIU 775 denies Paragraph 86.

9 87. The phrase “taken explicit action to indicate” is too vague and non-specific to be
10 admitted or denied; on that basis, SEIU 775 denies Paragraph 87.

11 88. SEIU 775 denies Paragraph 88.

12 89. SEIU 775 denies Paragraph 89.

13 90. SEIU 775 admits its communications, websites, conventions, public appearances
14 and interviews, and media may indicate that it occasionally transmits money from its general
15 treasury to its affiliated political committee, SEIU 775 Quality Care Committee, or to political
16 committees that support or oppose certain ballot initiatives. Paragraph 90 is otherwise denied.
17 SEIU 775 specifically denies that it earmarks a specific percentage of funds deriving from
18 member dues for electoral political activity in Washington or that it communicates to its members
19 or any other persons that it does so.

20 91. SEIU 775 denies Paragraph 91.

21 92. SEIU 775 denies Paragraph 92.

22 93. The filing by the SEIU International Union with the Department of Labor speaks
23 for itself.

1 94. SEIU 775's filing with the Department of Labor speaks for itself.

2 95. The filing by the SEIU International Union to the Department of Labor speaks for
3 itself.

4 96. The filing by the SEIU International Union with the Department of Labor speaks
5 for itself.

6 97. Paragraph 97 contains a legal conclusion to which no response is required. To the
7 extent a response is required, SEIU 775 lacks sufficient knowledge to admit or deny the
8 allegations contained therein.

9 98. Paragraph 98 contains a legal conclusion to which no response is required. To the
10 extent a response is required, SEIU 775 lacks sufficient knowledge to admit or deny the
11 knowledge or expectations of the SEIU International Union, and on that basis denies Paragraph
12 98.

13 99. SEIU 775 admits it gave "approximately \$1.35 million to Working Washington in
14 2016." The phrase "regularly lobbies elected officials and supports ballot measures" is too vague
15 and non-specific to be admitted or denied; on that basis, SEIU 775 denies this phrase in Paragraph
16 99.

17 100. SEIU 775 denies Paragraph 100.

18 101. SEIU 775 admits that the SEIU Political Education and Action Fund ("SEIU
19 PEAFF") is registered with the IRS as a non-profit organization pursuant to 26 U.S.C. § 527.
20 Paragraph 101's allegation that SEIU PEAFF is a political committee under that section is a legal
21 conclusion to which no response is required. To the extent a response is required, SEIU 775 is
22 without sufficient knowledge to admit or deny SEIU PEAFF's political committee status under
23 federal tax law, and on that basis denies that allegation. Further, SEIU 775 is without sufficient

1 knowledge to admit or deny SEIU PEAFF's motivations for registering as a non-profit
2 organization, and on that basis denies Paragraph 101's allegations concerning such motives.

3 102. SEIU 775 is without sufficient knowledge to admit or deny this allegation and
4 therefore denies Paragraph 102.

5 103. SEIU 775 admits that it received \$313,979 on September 6, 2016, from SEIU
6 PEAFF. SEIU 775 does not understand and therefore denies the allegation that SEIU PEAFF did this
7 "in turn."

8 104. SEIU 775 is without sufficient knowledge to admit or deny this allegation and
9 therefore denies Paragraph 104.

10 105. SEIU 775 admits the SEIU PEAFF contributed \$100,000 to SEIU 775 Quality Care
11 Committee on September 2, 2016. SEIU 775 does not understand and therefore denies the
12 allegation that SEIU PEAFF did this "in turn."

13 106. SEIU 775 admits Paragraph 106.

14 107. SEIU 775 is without sufficient knowledge to admit or deny this allegation and
15 therefore denies Paragraph 107.

16 108. SEIU 775 is without sufficient knowledge to admit or deny this allegation and
17 therefore denies Paragraph 108.

18 109. SEIU 775 admits SEIU PEAFF contributed \$200,000 to SEIU 775 Quality Care
19 Committee on July 14, 2017. SEIU 775 admits SEIU PEAFF contributed \$18,487 to SEIU 775 on
20 June 30, 2017. SEIU 775 does not understand and therefore denies the allegation that SEIU PEAFF
21 did this "in turn." SEIU 775 otherwise denies the allegations in Paragraph 109.

22 110. SEIU 775 is without sufficient knowledge to admit or deny Paragraph 110 and on
23 that basis denies Paragraph 110.

1 124. SEIU 775 denies Paragraph 124.

2 125. SEIU 775 admits Paragraph 125.

3 126. SEIU 775 denies Paragraph 126.

4 127. SEIU 775 denies Paragraph 127.

5 **Claim II**

6 128. SEIU 775 incorporates by reference its previous responses set forth above.

7 129. SEIU 775 incorporates by reference its responses set forth in Paragraphs 115-124.

8 130. Paragraph 130 contains legal conclusions to which no response is required. To the
9 extent that a response is required, Paragraph 130 is denied.

10 131. SEIU 775 admits it receives funds, deposits money in its bank account, and makes
11 expenditures. Paragraph 131 is otherwise denied.

12 132. SEIU 775 denies Paragraph 132.

13 133. SEIU 775 denies Paragraph 133.

14 134. SEIU 775 denies Paragraph 134.

15 **Claim III**

16 135. SEIU 775 incorporates by reference its previous responses set forth above.

17 136. SEIU 775 denies Paragraph 136.

18 137. SEIU 775 incorporates by reference its responses set forth in Paragraphs 115-124
19 with respect to June 2016.

20 138. SEIU 775 denies Paragraph 138.

21 139. SEIU 775 denies Paragraph 139.

22 140. SEIU 775 admits Paragraph 140.

23 141. SEIU 775 denies Paragraph 141.

1 142. SEIU 775 denies Paragraph 142.

2 **Claim IV**

3 143. SEIU 775 incorporates by reference its previous responses set forth above.

4 144. SEIU 775 denies Paragraph 144.

5 145. SEIU 775 incorporates by reference its responses set forth in Paragraphs 115-124
6 with respect to June 2016.

7 146. SEIU 775 admits that in June 2016 it received funds and deposited money in its
8 bank account. Paragraph 146's allegation that SEIU 775's expenditures were "political" in nature
9 is too vague and non-specific to be admitted or denied and on that basis is denied. Paragraph 146
10 is otherwise denied.

11 147. SEIU 775 denies Paragraph 147.

12 148. Paragraph 148 contains legal conclusions to which no response is required. To the
13 extent that a response is required, Paragraph 148 is denied.

14 149. SEIU 775 denies Paragraph 149.

15 150. SEIU 775 denies Paragraph 150.

16 151. SEIU 775 denies Paragraph 151.

17 **VI. REQUESTED RELIEF**

18 Paragraphs 1-3 under this Section of the Complaint contain statements of Plaintiff's legal
19 position regarding relief, and therefore require no answer. Notwithstanding the preceding, SEIU
20 775 denies that Plaintiff is entitled to the relief requested in Paragraphs 1-3.

21 **VII. AFFIRMATIVE DEFENSES**

22 BY WAY OF FURTHER ANSWER and as AFFIRMATIVE DEFENSES, SEIU 775
23 alleges that:

1 7.1. This Court lacks subject matter jurisdiction over this matter.

2 7.2. RCW 42.17A *et. seq.* is unconstitutional either on its face and/or as applied here,
3 including but not limited to insofar as it impermissibly interferes with SEIU 775's rights under the
4 First Amendment.

5 7.3. RCW 42.17A *et. seq.* is unconstitutional because its enactment via Initiative
6 Measure No. 276 violated the prohibition contained in Article II, § 19 of the Washington State
7 Constitution stating “[n]o bill shall embrace more than one subject and that [subject] shall be
8 expressed in the title.”

9 7.4. Plaintiff's claims are preempted by federal law.

10 7.5. This citizen action was brought without reasonable cause and SEIU 775 is entitled
11 to all costs and reasonable attorney's fees for having to defend against this action.

12 7.6. Any act or omission by SEIU 775 was not intentional, but rather was undertaken in
13 good faith.

14 7.7. This action was improperly brought, as Plaintiff did not comply with the relevant
15 procedures and time periods outlined under the FCPA, and specifically in RCW 42.17A.765(4),
16 as such existed on the date this action was commenced.

17 7.8. Plaintiff's claims are barred by the priority of action doctrine.

18 7.9. Plaintiff's continued prosecution or pursuit of its claims is barred by the 2018
19 amendments to the FCPA.

20 7.10 RCW 42.17A.775 (formerly codified at RCW 42.17A.765(4)) violates the
21 Washington Constitution.

22 7.11 The relief sought by Plaintiff is precluded by RCW 42.56.640 *et. seq.*

23 7.12 Plaintiff's Complaint is time-barred.

1 8.5. The Plaintiff, acting in place of the State, has violated SEIU 775’s Constitutional
2 right to Equal Protection by selectively enforcing the Fair Campaign Practices Act against a class
3 of entities of which SEIU 775 is a member.

4 8.6. The Plaintiff targeted SEIU 775 because it believes SEIU 775 supports
5 Democratic, Democratically-aligned, or otherwise progressive or left-leaning candidates, ballot
6 propositions and issues; because SEIU 775 gives money to its affiliated political committee, SEIU
7 775 Quality Care Committee, which donates to or otherwise supports such progressive or left-
8 leaning candidates and causes; and because of what it perceives as being SEIU 775’s political
9 views and affiliations.

10 8.7. The Plaintiff’s enforcement actions have had a discriminatory effect and have only
11 been brought against Democratic, Democratic-donating, or otherwise progressive or left-leaning
12 entities but not against similarly-situated Republican, Republican-donating, conservative, or right-
13 leaning entities, in violation of SEIU 775’s First Amendment rights.

14 8.8. The Plaintiff was motivated by a discriminatory purpose and seeks to enforce this
15 statute because of, not in spite of, SEIU 775’s perceived ideology and SEIU 775’s First
16 Amendment-protected right to support Democratic, Democratically-aligned, or otherwise
17 progressive or left-leaning entities.

18 8.9. The Plaintiff exhibits a pervasive pattern of targeting only Democratic,
19 Democratically-aligned, or otherwise progressive or left-leaning entities.

20 8.10 Plaintiff’s actions violate both the First and Fourteenth Amendments of the United
21 States Constitution.

22 8.11. As a result of Plaintiff’s actions, SEIU 775 has been damaged in an amount to be
23 proven at trial, and is entitled to its attorneys’ fees and costs herein to defend the claim.

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Defendant SEIU 775 prays that the Court:

3 9.1. Dismiss Plaintiff's claims against Defendant with prejudice and without costs;

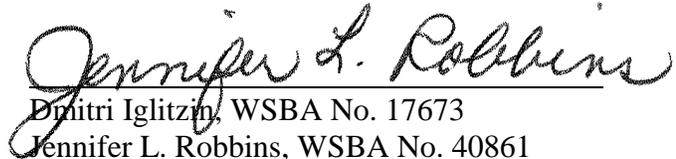
4 9.2. Grant SEIU 775's Counterclaim and award damages;

5 9.3. Award SEIU 775 attorneys' fees and costs;

6 9.4. Permit leave to amend these pleadings to conform to the evidence presented at
7 trial; and

8 9.5. Provide such other relief as the Court deems just and equitable.

9
10 RESPECTFULLY SUBMITTED this 30th day of January, 2019.

11 

12 Dmitri Iglitzin, WSBA No. 17673

13 Jennifer L. Robbins, WSBA No. 40861

14 Danielle Franco-Malone, WSBA No. 40979

15 Benjamin Berger, WSBA No. 52909

16 **BARNARD IGLITZIN & LAVITT LLP**

17 18 W Mercer St, Suite 400

18 Seattle, WA 98119

19 (206) 257-6003

20 (206) 257-6038

21 iglitzin@workerlaw.com

22 robbins@workerlaw.com

23 franco@workerlaw.com

24 berger@workerlaw.com

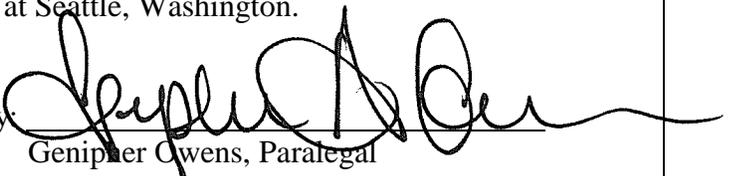
Counsel for SEIU 775

DECLARATION OF SERVICE

I, Genipher Owens, declare under penalty of perjury under the laws of the State of Washington, that on the date set forth below I served the foregoing document listed, in the manner noted on the following parties:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
James G. Abernathy JAbernathy@myfreedomfoundation.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail Per Agreement of Counsel <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Service
Eric R. Stahlfeld EStahlfeld@freedomfoundation.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail Per Agreement of Counsel <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Service
Kirsten Nelsen KNelsen@myfreedomfoundation.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail Per Agreement of Counsel <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Service
Jennifer Matheson JMatheson@freedomfoundation.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail Per Agreement of Counsel <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Service
General Mailbox Legal@myfreedomfoundation.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail Per Agreement of Counsel <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Service

DATED this 30th day of January, 2019 at Seattle, Washington.

By: 
Genipher Owens, Paralegal

FREEDOM FOUNDATION

September 30, 2019 - 12:24 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97604-0
Appellate Court Case Title: SEIU 775 v. Freedom Foundation
Superior Court Case Number: 18-2-00454-1

The following documents have been uploaded:

- 976040_Other_20190930122304SC171711_4102.pdf
This File Contains:
Other - Appendix
The Original File Name was 2019-09-30 Appendix RESP to MDR Fina.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
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- sphillips@freedomfoundation.com
- woodward@workerlaw.com

Comments:

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Filing on Behalf of: Eric Rolf Stahlfeld - Email: lawyer@stahlfeld.us (Alternate Email:)

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FREEDOM FOUNDATION

September 30, 2019 - 12:23 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97604-0
Appellate Court Case Title: SEIU 775 v. Freedom Foundation
Superior Court Case Number: 18-2-00454-1

The following documents have been uploaded:

- 976040_Answer_SOG_for_Direct_Review_20190930121714SC300288_1081.pdf
This File Contains:
Answer to Statement of Grounds for Direct Review
The Original File Name was 2019-09-30 FF RESP to MOT for Discretionary Review Final.pdf

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