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Court of Appeals
Division II
State of Washington
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NO. 52726-0-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SEIU 775,
Petitioner

v.

FREEDOM FOUNDATION,
Respondent.

**RESPONDENT FREEDOM FOUNDATION'S RESPONSE IN
OPPOSITION TO PETITIONER'S MOTION FOR
DISCRETIONARY REVIEW**

Eric Stahlfeld, WSBA # 22002
Sydney Phillips, WSBA # 54295
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
Email: estahlfeld@freedomfoundation.com
sphillips@freedomfoundation.com
Attorneys for Respondent

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I. INTRODUCTION.

Petitioner SEIU 775 asks this Court to grant discretionary review of the trial court's denial of SEIU 775's motion to dismiss Respondent Freedom Foundation's ("Foundation") citizen's action alleging violations of the Fair Campaign Practice Act ("FCPA"). SEIU 775 argues RCW 42.17A.765(4)(a)¹ requires that a citizen's action be filed within ten (10) days of some event happening.

The Foundation contends, and the trial court found, that there was a single ten-day requirement to provide *notice* to the attorney general and the prosecuting attorney. Similarly, the trial court ruled that the statute's language did not result in an affirmative obligation, duty, or requirement on the part of the person to act within ten (10) days of the notification. *See* RCW 42.17A.765(4)(a)(ii).

This Court should deny the union's request for discretionary review. The lower court's 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 under RAP 2.3(b)(1) or (2).

¹ The legislature amended the FCPA in 2018, effective after the date of this lawsuit. This Response cites the statute as it existed prior to the 2018 amendments.

II. IDENTITY OF RESPONDENT.

The respondent is Freedom Foundation, the Plaintiff below.

III. COUNTERSTATEMENT OF ISSUE PRESENTED.

Whether the court should review of the trial court's denial of SEIU 775's motion to dismiss the Foundation's citizen's action under the FCPA, where the Foundation provided notice to the attorney general and prosecuting attorneys they had ten days to act if they wanted to control prosecution of the alleged FCPA violations, and in fact filed its citizen action within the two-year statute of limitations?

IV. STATEMENT OF CASE.

SEIU 775 has not registered as a political committee, even though it acts like one. It spends millions of dollars on political activity. 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. *See* Motion at 18, note 13.

The Foundation is a Washington nonprofit organization *See* Complaint ¶6. It issued written notices specifying the alleged FCPA violations to the Washington Attorney General and Prosecuting Attorneys of King and Thurston County (together the "public officials") as the FCPA requires on December 14, 2016 and on September 8, 2017 *See* Complaint ¶2, 3. 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* Complaint ¶ 2. None of the public officials pursued enforcement of the alleged violations *See* Complaint ¶3.

On January 19, 2018, the Foundation filed this lawsuit against SEIU 775 in Thurston County Superior Court, *See* Original Complaint, well within the two-year statute of limitations. 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 inventive argument that the Foundation's claims were procedurally barred because the Foundation did not bring the citizen's action within ten days of some event, supposedly the public officials failure to act within ten days of whenever they happened to receive the Foundation's notice. *See* Motion. The trial court denied SEIU 775's motion after a hearing on November 9, 2018 *See* Transcripts p. 54-5. The trial court denied SEIU 775's Motion to Certify the procedural issue for discretionary review, on December 7, 2018. *See* Order 12-7-18. SEIU subsequently filed a Notice of Discretionary Review on December 10, 2018. *See* Notice of Discretionary Review.

V. ARGUMENT.

Respondent requests that this Court deny SEIU 775's motion for discretionary review of the Superior Court's denial of SEIU 775's third motion to dismiss, and its subsequently filed motion to certify the

procedural issue for discretionary review. The Superior Court below acted well within its discretion in denying the motions 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. The Union should wait until the appropriate time, if it is even necessary, to pursue these arguments on appeal.

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, or committed probable error that substantially alters the *status quo*. RAP 2.3(b)(1)-(2). Further proceedings are not useless, 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 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. 813, 820, 21 P.3d 1157, 1161 (2001) (*citing* RAP 2.4(b) and *Kreidler v. Eikenberry*, 111

Wash.2d 828, 836, 766 P.2d 438 (1989)). If the plaintiff loses at trial, the matter will never even come up for review.

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 Wash.2d 756, 762, 317 P.3d 1003, 1006 (2014) (citing *City of Seattle v. Winebrenner*, 167 Wash.2d 451, 456, 219 P.3d 686 (2009)). Even if it were, further proceedings below are not useless, and nothing has changed the status quo.

B. Further Proceedings Are Not Useless, Even If The Trial Court Committed Obvious Error

Discretionary review pursuant to RAP 2.3(b)(1) is only accepted if the Superior Court committed obvious error which would render further proceedings useless. As such, discretionary review should be denied because the Thurston County Superior Court did render further proceedings useless. Further proceedings can go forward, to make an independent determination 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 Wash.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. But this is nothing more than the run-of-the-mill litigation harm, which if it did satisfy the criteria for discretionary review, would be present in every single lawsuit. If this were the case, then discretionary review would be the rule and not the exception. Thus, the two prongs of RAP 2.3(b)(1) are both necessary to discuss and will be done so in reverse order.

a. Determining This Action On The Merits Is Not “Useless.”

It is necessary to discuss the second prong of RAP 2.3(b)(1) first due to the conflation of the terms “obvious” and “probable” requiring an analysis of the harm asserted. As discussed in *Meinhart*, 156 Wash.App. 457, 463, 232 P.3d 591 (2010), 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 will still be able to appeal the trial court’s order, should an adverse judgment be entered against it after trial, unlike denial of certain other motions. *See, e.g., Johnson v. Rothstein*, 52 Wn. App 303, 759 P.2d 471 (1988) (holding that a denial of summary judgment cannot be appealed following a trial if the denial was based upon a determination that material facts are in dispute and must be resolved by the trier of fact).

The second prong to RAP 2.3(b)(1) is that the obvious error would “render further proceedings useless.” RAP 2.3(b)(1). 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 easily distinguishable. In both *Hartley* and *Glass*, the court was required to look at new and novel legislation with wide-reaching implications for governmental liability. *Hartley*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985).

SEIU 775 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 implication’ See Motion at 15. This is a blatant mischaracterization of the language in *Hartley*, where the Supreme Court of Washington was first referencing RAP 2.3(b)(1)’s “useless” language, and then – much later in the opinion and no longer on the same point – stated that it was “...interpreting a new statute with wide implication for governmental liability.” *Hartley*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985). SEIU 775 has purposefully married two (2) unrelated utterances in the opinion, in an attempt to fashion a brand new analysis to be used anytime a court interprets legislation in a way unfavorable to its interests.

Similarly, SEIU 775 attempts to equate the Foundation’s filing of the citizen action to being procedurally time barred in a similar manner to the plaintiff in *Douchette v. Beth Sch. Distr. No. 403*, 117 Wash.2d 805, 818 P.2d 1362 (1991), thus requiring review under RAP 2.3(b)(1). However, the

procedural bar in *Douchette* is easily distinguished from the one being alleged by SEIU 775. In *Douchette*, the plaintiff acknowledged that her claims were subject to two (2) and three (3) year statutes of limitations *Douchette*, 117 Wash.2d 805, 809 818 P.2d 1362 (1991). As such, the issues there were much more akin to the two (2) year statute of limitations from the date of the alleged violation for a citizen’s action to be brought under RCW 42.17A.765(4)(a)(iv), than the new argument presented by SEIU 775 suggesting that citizen must both notify within ten (10) days, and then within a subsequent period of ten (10) days, file a citizen’s action. *Id.* The only language in Section 765 which imposes a restriction on when a “citizen’s action is filed” is the limitations period in § 765(4)(1)(iv) which requires the action be “filed within two years after the date when the alleged violation occurred.” Further, to acknowledge SEIU 775’s concerns that this leaves a potential suit in limbo for two years it is necessary to point out that it is common that potential defendants have lawsuits, or even criminal indictments, looming over their heads for periods of time much longer than two years. For example, limitation periods for breaches of written contract are six years, RCW 4.16.040, and some criminal charges can be brought at any time.

b. 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 decision to deny its motion to dismiss was an obvious error. In fact, SEIU 775 seemingly attempts to utilize the exact same “plain language” argument made in their motion to dismiss in an attempt to sway this court that the trial court committed an obvious error. *See* Motion, at 6. Webster’s Third New International Dictionary defines “obvious” as “capable of easy perception,” “easily understood,” and “disappointingly simple and easy to discover or interpret.” *Webster’s Third New International Dictionary* 1559 (1986). Yet, despite the clear definitional language of the term “obvious,” SEIU 775 offers nothing to support its contention that the trial court’s decision was an obvious error, and simply relies upon its argument relating to the statutory structure. SEIU 775 fails to cite a single case which interprets the relevant statutory provision as SEIU 775 does; nor has SEIU 775 countered the several cases cited by the Foundation which supports the Foundation’s more reasonable interpretation. As SEIU 775 has failed to even satisfy the first prong for discretionary review, the Court need not proceed any further in its consideration of the Motion.

A portion 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 13. 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). 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). The legislature knows how to write a clear statute of limitations.

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 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.

SEIU 775 contends in a similar vein that *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n ("EFF 1")*, 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. Evergreen Freedom Found. v. Nat'l Educ. Ass'n ("EFF 2")*, 119 Wash.App. 445, 81 P.3d 911 (2003) where the Division 2 Court of Appeals expressly disavowed their language in *EFF 1* relating to tolling of the statute of limitations on a citizen's action. *Evergreen Freedom Found.*, 119 Wash.App. at 452 (2003).

Despite this oversight, *EFF 1* confirms the interpretation that the ten (10) day requirement is related to notice, not filing of a citizen's action. A citizen action may be brought "if **three** conditions are met." *Evergreen Freedom Found.*, 111 Wn.App. 586, 604, 49 P.3d 894 (2002) (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 requires the *citizen* to bring the action within ten days.

The Court in *EFF 1* 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 *EFF 2* later acknowledged, the purpose of the section is to give the Attorney General a timeframe during which it can prevent a citizen's complaint by filing its own. *Evergreen Freedom Found.*, 119 Wash.App. at 453 (2003) (“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.”).

C. No “Probable Error” Is Evident in The Trial Court’s Decision.

a. **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. In fact, SEIU 775 seemingly attempts to utilize the exact same argument it used for “obvious error” as discussed above and then simply pivot to the second prong. What SEIU 775 fails to acknowledge is that if there is not “probable error” then the court does not even need to address the second prong of RAP 2.3(b)(2). Webster’s Third New International Dictionary defines “probable” as “that 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 which were an unpersuasive reading of RCW 42.17A.765. For these reasons, as well as those set forth *supra* at 8, SEIU 775 has not demonstrated a probable error made by the Superior Court which would require an analysis of the “effect prong” of RAP 2.3(b)(2).

b. Neither 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.

SEIU 775 cites to *State v. Howland* when they write, “Determining whether a trial court ruling that constitutes probable error satisfies the ‘effect prong’ of RAP 2.3(b)(2) is not ‘easily done.’” *State v. Howland*, 180 Wn.App. 196, 206, 321 P.3d 303 (2014). But once again, SEIU 775 has taken “creative liberties” with that court’s words, by ignoring the two sentences which follow the “not ‘easily done’” language.

The two sentences which follow in *Howland* say:

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. 196, 206, 321 P.3d 303 (2014) (emphasis added).

SEIU 775 attempts to skirt this language, which 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 wait 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 6. Of course, SEIU 775 would prefer to avoid protracted litigation, as would any defendant. But there is not a special set of litigation rules for SEIU 775, or unions generally. In this light, Petitioner’s concerns of “extensive discovery” betray its true motivations. *See* Motion, at 17, footnote 8. By its Motion, the Union seeks merely to short-circuit the normal litigation process, insulate itself from lawful inquiry into its activities, and impose upon this Court matters which should await another day.

SEIU 775 then attempts to argue that the effect prong is met once again by citing to *Howland* and its discussion of former Supreme Court Commissioner Geoffrey Crooks’ law review article citing “...a ruling may substantially alter the status quo and/or substantially limit the freedom of a party to act when it ‘has effects beyond the parties’ ability to conduct the immediate litigation’” *See* Motion at 18. Yet, when looking at the court’s discussion in totality, Crooks was discussing when a trial court’s order has

an immediate effect outside the courtroom, giving examples such as a court order to remove a physical structure, or a court “restraining a party from disposing of his or her private property.” *Howland*, 180 Wash.App. 196, 207, 321 P.3d 303 (2014). These alterations to the *status quo* were much more permanent in nature, and much more deserving of immediate review, than SEIU 775 being required to ensure during the pendency of this litigation that it does not violate applicable law, or to comply with reasonable rules of discovery while undergoing litigation.

SEIU 775 in the same way attempts to compare its motion for discretionary review to the motion which was granted in *Karstetter v. King County Corr. Guild*, 1 Wn. App.2d 822, 825, 407 P.3d 384 (2017). However, in *Karstetter* the breach of contract claim was held unenforceable because it violated WA public policy, and the wrongful discharge claim should have been dismissed because plaintiff failed to plead sufficient facts to support the claim. *Karstetter*, 1 Wn.App.2d at 827. These facts are so divergent as to have no relevance to the argument being alleged by SEIU 775. As SEIU 775 has not demonstrated either probable error or the effect prong of RAP 2.3(b)(2), they are not entitled to discretionary review by this court.

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

SEIU 775 spends the vast majority of its Motion arguing the trial court got it wrong in interpreting the FCPA. That, of course, is not the standard for discretionary review. The trial court got it right, and denied SEIU 775’s motion to certify the question for review.

Although not relevant to the question whether discretionary review should be granted, the Foundation will briefly address why the decision below correctly interprets the FCPA.

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 the 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.

The parties agree the language on which SEIU 775 relies is clear. The parties agree no reported decision has interpreted it to require a citizen to bring an action within ten days of some event.

On its face, the relevant language requires the citizen "further notif[y]" the public officials that they must act. What must be included in the notice perhaps is in dispute, but the plain language requires the citizen only to notify the officials, and SEIU 775 admits the Foundation did.

SEIU 775 makes no attempt to argue its interpretation reflects the intent of the legislature. Rather, SEIU 775 mechanically recites the "last antecedent rule" to argue the citizen in this "ten day" notice must tell the

public officials the citizen will bring the “citizen’s action within ten days upon their failure to do so.” If the citizen does not, he breaks some sort of promise (to whom?) and can never bring the citizen’s action.

This grammatical analysis fails on several grounds. First, it is unnecessary where the plain language is clear. Here, the provision plainly requires the citizen only to give notice. Secondly, it fails to consider the remainder of the sentence, which does *not* obviously refer to the immediately preceding words as the last antecedent rule would require. “Their” would refer to the citizen, but it’s clear this refers to the public officials. The failure “to do so” would refer to the citizen’s action having to be brought, but the public officials by definition cannot bring a citizen’s action.

The legislative intent is to notify the AG and prosecuting attorneys, perhaps months after the initial 45-day notice, that they have only ten more days after receipt to act if they want to control prosecution of the alleged FCPA violations. This is a salutary provision, which ought to occur more often.

Rather than discern this legislative intent, SEIU 775 seeks to invent a second, “symmetrical,” ten day period. This is contrary to the language in RCW 42.17A.765(4)(a)(iii), which uses the phrase “in fact” to refer to the ten day period in the previous section. It is contrary to the 2018 FCPA amendments, which delete (4)(a)(iii), leaving only a single reference to a ten day period, and which, under the SEIU 775 interpretation, *never* have a

start date for when the supposedly ten day period the citizen has to act would begin to run.

This illustrates another issue with the SEIU 775 interpretation. The citizen almost certainly cannot know when the Attorney General, or any or all of the prosecuting attorneys, actually *receive* the notice. The public officials ten days begins to run from receipt of the notice; SEIU 775 would have the citizen's ten days begin to run from ten days of a failure to act, which presumably would be ten days from receipt. But the citizen could not know the date all the public officials *receive* the notice.

Given this extraordinarily short time for a citizen to file his or her action, not knowing the start date is critical. One would expect the statute to be specific, were that the legislative intent. One would expect *something* in the legislative history, particularly when the legislature has twice amended these provisions, but there is nothing.

The FCPA is clear. There is only a single ten 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. The notice alerts the public officials, serving a valuable purpose. The Foundation satisfied that purpose. The trial court did not err in so ruling.

VI. CONCLUSION.

SEIU 775 shows no harm beyond that common to every single lawsuit. Nothing alters the status quo or renders further proceedings useless. Both parties agree the relevant statute requires the citizen to provide notice to the

public authorities. The trial court denied SEIU 775's motion to certify the question for review.

This Court should deny SEIU 775's motion for discretionary review.

RESPECTFULLY SUBMITTED this 12th day of February, 2019.

Eric Stahlfeld, WSBA No. 22002
Sydney Phillips, WSBA No. 54295
Freedom Foundation
P.O. Box 552 Olympia, WA 98507
P (360)956-3482 | F (360)352-1874
estahlfeld@freedomfoundation.com
sphillips@freedomfoundation.com

*Counsel for Respondent Freedom
Foundation*

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on February 12, 2019, I caused the foregoing APPENDIX IN SUPPORT OF RESPONSE IN OPPOSITION TO PETITIONER'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
Danielle Franco-Malone
Benjamin Berger
Bernard Iglitzin & Lavitt LLP
18 West Mercer Street STE 400
Seattle WA 98119
Iglitzin@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

Attorneys for Defendants

Signed February 12, 2019, at Olympia Washington.



Jennifer Matheson

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

Eric Stahlfeld, WSBA # 22002
Sydney Phillips, WSBA # 54295
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
Email: estahlfeld@freedomfoundation.com
sphillips@freedomfoundation.com
Attorneys for Respondent

APPENDIX PAGE NUMBER	DESCRIPTION
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021	Plaintiff Freedom Foundation's Complaint filed 1/19/2018
039	Defendant SEIU 775's Motion to Dismiss, filed 8/28/2018
062	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
119	Order denying Defendant SEIU 775's Motion for Certification, entered 12/7/2018
122	Defendant SEIU 775's Notice of Discretionary Review, filed 12/10/2018

RESPECTFULLY SUBMITTED this 12th day of February, 2019.

By:

Eric Stahlfeld, WSBA No. 22002
 Sydney Phillips, WSBA No. 54295
 Freedom Foundation
 P.O. Box 552
 Olympia, WA 98507
 P (360)956-3482 | F (360)352-1874
estahlfeld@freedomfoundation.com
sphillips@freedomfoundation.com

*Counsel for Respondent Freedom
 Foundation*

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on February 12, 2019, I caused the foregoing APPENDIX IN SUPPORT OF RESPONSE IN OPPOSITION TO PETITIONER'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
Danielle Franco-Malone
Benjamin Berger
Bernard Iglitzin & Lavitt LLP
18 West Mercer Street STE 400
Seattle WA 98119
Iglitzin@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

Attorneys for Defendants

Signed February 12, 2019, at Olympia Washington



Jennifer Matheson

- 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.,
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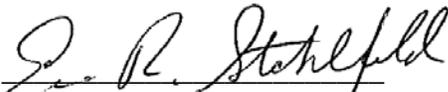
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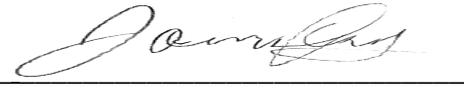
RCW 42.17A, or other law.

- 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
[EStahlfeld@freedomfoundation.com](mailto: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

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DECLARATION OF SERVICE

I, Kirsten Nelsen, hereby declare under penalty of perjury under the laws of the State of Washington that on April 5, 2018, I caused the foregoing Plaintiff Freedom Foundation’s Amended Complaint to be filed with the clerk, and caused a true and correct copy of the same to be sent via e-mail pursuant to agreement, to the following:

Dmitri Iglitzin
Danielle Franco-Malone
Benjamin Berger
Schwerin Campbell Barnard Iglitzin & Lavitt, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119
Iglitzin@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com
Woodward@workerlaw.com

Attorneys for Defendants

Dated: April 6, 2018

By: 
Kirsten Nelsen

- 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.

**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.

17 9. Defendant Adam Glickman at all times material hereto has been and is SEIU’s Secretary-
18 Treasurer and is being sued in his official capacity.

19 **III. JURISDICTION AND VENUE**

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

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

23 12. Plaintiff issued the written notices required by RCW 42.17A.765(4)(a)(ii) on February 1,
24

1 2017 and October 26, 2017.

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

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

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

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

13 **IV. STATEMENT OF FACTS**

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

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

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

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

21 21. SEIU reported on its 2016 LM-2 Statement B, submitted yearly to the U.S. Department of
22 Labor, that in calendar year 2016 it made \$5,995,912 in cash expenditures for "political activity
23 and lobbying."
24

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

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

7 24. SEIU reported on its federal Form LM-2 for 2016 that it gave \$120,000 in contributions to
8 the Yes on I-125 Committee, a political committee based in Seattle supporting Seattle Initiative
9 125.

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

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

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

16 28. SEIU’s LM-2s from 2015 and 2014 reveal that SEIU designated \$4,450,038 and
17 \$2,654,218, respectively, of its financial resources to use as expenditures for “political activities
18 and lobbying.”

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

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

23 31. SEIU has donated to its own political action committee over \$1,500,000 in cash and over
24

1 \$40,000 in in-kind contributions during the same time period.

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

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

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

9 35. President David Rolf told the 2014 SEIU convention attendees, including SEIU members,
10 that the union had “put 400 professional union organizers” doorbelling in eight-hour shifts, for six
11 days, in support of a local initiative.

12 36. President David Rolf told the 2014 SEIU convention attendees, including SEIU members,
13 that if elected officials don’t want to negotiate a fair contract, “we’ll just write the union contract
14 into the city law.”

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

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

21 39. Based on its most recent audited financial statement, SEIU itself states that in 2016
22 approximately forty-three percent (43%) of its expenditures were not germane to collective
23 bargaining (“nonchargeable expenses”) but instead dedicated towards other activities. Most of
24

1 these other activities constitute political activities.

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

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

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

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

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

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

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

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

20 48. This actually is unusually low. SEIU’s LM-2 report from 2015 indicates that David Rolf
21 spent sixty-two percent (62%) of his time on political activities and lobbying.

22 49. According to SEIU’s LM-2 report from 2014, David Rolf, spent zero percent (0%) of his
23 time on representational activities and forty percent (40%) of his time on political activities and
24

1 lobbying.

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

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

7 52. According to SEIU's LM-2 report from 2015, Adam Glickman spent forty-three percent
8 (43%) of his time on political activities and lobbying.

9 53. According to SEIU's LM-2 report from 2014, Adam Glickman spent sixty-one percent
10 (61%) of his time on political activities and lobbying.

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

13 Because state, federal, and local legislative activity affects the wages, benefits, and
14 rights of all workers, and because the long term care industry specifically is funded
15 in principal part by public dollars, the outcome of elections for many public offices
16 is very important to the Employer [SEIU 775]. [SEIU 775] regularly makes
17 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].

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

20 56. Section 6.8 of SEIU's Constitution and Bylaws requires all candidates and prospective
21 candidates for union offices to disclose within seven (7) days any and all contributions, other
22 financial support, and in-kind donations, specifying the amount and date receipt, and donor's
23 name, complete address and SEIU Union membership affiliation.

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

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

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

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

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

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

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

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

19 65. SEIU President David Rolf provided information on key 2016 local race results on
20 November 9, 2016 (the day after the election) in an email to SEIU members, saying he was proud
21 of SEIU's successes, SEIU elected candidates who fight for SEIU members, and in the next few
22 months he would be asking SEIU members to contact elected officials to support funding for the
23 collective bargaining agreement.

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

3 Make no mistake about it: **our [SEIU’s] political action** combined with the contributions
4 we make to [SEIU] COPE – our political accountability fund – are the keys to our success.
5 By uniting and flexing our political muscle, we hold politicians accountable for our clients
6 and for ourselves. Every year, thousands of caregivers join together, knock on doors, pass
7 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
8 pathway to \$15 for all long-term caregivers, securing a meaningful retirement and
9 expanding access to quality, affordable healthcare. **This doesn’t come cheap.**

8 (Emphasis added.)

9 67. Under SEIU 775’s and National SEIU’s Constitutions and Bylaws, a certain percentage of
10 the dues SEIU collects must be forwarded to SEIU Council 14, a political committee.

11 68. Under SEIU 775’s and National SEIU’s Constitutions and Bylaws a certain percentage of
12 SEIU 775 dues must be contributed to SEIU’s Political Education and Action Fund, which is
13 registered in Washington as an out-of-state political committee.

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

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

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

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

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

1 74. "Holding politicians accountable" is SEIU's way of politely telling elected officials—
2 from President, to Senator, to Governor, to legislators, to judges, to city councils—that if the
3 officials do not act as SEIU would like, the union will seek to defeat them at their next election.

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

9 76. In a "Notice to SEIU Healthcare 775 Represented Employees in Home Care and Adult
10 Day Health Bargaining Units Subject to Union Security Obligations," SEIU stated that it makes
11 expenditures such as "supporting and contributing to political organizations and candidates for
12 public office; supporting and contributing to ideological causes and committees, including ballot
13 measures."

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

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

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

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

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

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

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

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

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

14 84. SEIU set aside and/or segregated money from previous years to contribute to 2016 I-1501
15 campaign, and other political activities/campaigns.

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

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

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

22 88. SEIU solicits contributions for political advocacy/political activities in many ways,
23 including but not limited to recruiting providers and other caregivers to become SEIU members
24

² Other articles to this effect include: <http://kuow.org/post/here-are-real-winners-and-one-loser-years-ballot-initiatives> (last visited January 19, 2018) and <http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-clout-keeps-swelling> (last visited January 19, 2018).

1 based on a stated need to engage in political activities to accomplish SEIU's goals and missions.

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

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

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

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

12 93. The SEIU national headquarters reported on Schedule 16 of its federal Form LM-2 for
13 2016 that it contributed \$189,380 to SEIU in itemized contributions supporting political advocacy.

14 94. SEIU on Schedule 14 of its federal Form LM-2 for 2016 reported that it received
15 \$1,000,000 in contributions from the national SEIU itemized for "campaign" activities.

16 95. The SEIU national headquarters reported on Schedule 16 of its federal Form LM-2 for
17 2015 that it contributed to Defendant SEIU \$540,000 in itemized contributions supporting political
18 advocacy.

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

22 97. According to the U.S. Department of Labor, a "political disbursement or contribution" for
23 the purposes of Schedule 16 of LM-2s is "one that is intended to influence the selection,
24

1 nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative
2 or judicial public office, or office in a political organization, or the election of Presidential or Vice-
3 Presidential electors, and support for or opposition to ballot referenda.”

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

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

8 V. CLAIMS

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

10 100. The Foundation hereby incorporates the allegations above as if fully set forth
11 herein.

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

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

18 103. SEIU is a political committee under the contributions prong of RCW
19 42.17A.005(37).

20 104. SEIU is primarily funded by union dues.

21 105. SEIU sets aside and/or segregates its funds, including union dues, for political
22 activities.

23 106. SEIU members know or reasonably should know SEIU uses those funds, including
24

1 union dues, for political activities and/or intend or expect their dues to be used for political activity.

2 107. SEIU also receives contributions from organizations with the expectation and/or
3 knowledge that those contributions will be spent on political activity.

4 108. SEIU is also a political committee under the expenditures prong of RCW
5 42.17A.005(37).

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

8 110. SEIU has also made expenditures in the form of organized campaign activities
9 conducted by its members and officers to support or oppose election campaigns.

10 111. Electoral political activity is one of SEIU's primary purposes.

11 112. SEIU has never filed a statement of organization.

12 113. SEIU has violated and continues to violate RCW 42.17A.205.

13 114. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
14 detailed below.

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

16 115. Plaintiff hereby incorporates the allegations above as if fully set forth herein.

17 116. Plaintiff specifically incorporates here the allegations contained in paragraphs 103-
18 111.

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

22 118. SEIU has received contributions, made expenditures, and deposited money in its
23 bank account.

1 119. SEIU has never filed any reports with the PDC.

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

3 121. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
4 detailed below.

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

6 122. Plaintiff hereby incorporates the allegations above as if fully set forth herein.

7 123. In the alternative, should SEIU not be liable as a political committee for the entire
8 period covered by this Complaint or any shorter period, SEIU was a political committee in June
9 2016.

10 124. The Foundation specifically incorporates herein the allegations above in paragraphs
11 103-111 with respect to June 2016.

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

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

16 127. SEIU has never filed a statement of organization.

17 128. SEIU has violated and continues to violate RCW 42.17A.205.

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

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

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

22 131. 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.

2 132. The Foundation specifically incorporates herein the allegations above in paragraphs
3 103-111 with respect to June 2016.

4 133. SEIU received contributions, deposited money in its bank account, and in June
5 2016, made political expenditures of more than half its revenue on political activities.

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

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

11 136. SEIU has never filed any such reports with the PDC.

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

13 138. Defendants are liable for civil penalties pursuant to RCW 42.17A.750, et seq.,
14 detailed below.

15 **VI. REQUESTED RELIEF**

16 WHEREFORE, Plaintiff requests the following forms of relief:

- 17 1. For such remedies as the Court deems appropriate under RCW 42.17A.750, including:
- 18 a. a judgment against Defendants in the amount of a \$10,000 (ten thousand dollar)
19 penalty pursuant to RCW 42.17A.750(1) for each violation of chapter 42.17A
20 RCW, in favor of and payable to the State of Washington, in an amount to be
21 determined through discovery and/or at trial;
- 22 b. a judgment against Defendants in the amount of a \$10 (ten dollar) penalty pursuant
23 to RCW 42.17A.750(1)(d) for each day defendant failed to file a properly
24

1 completed statement or report, in favor of and payable to the State of Washington,
2 in an amount to be determined through discovery and/or at trial;

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

5 d. a finding that Defendants' violations were intentional and trebling the amount of
6 judgment, which for this purpose shall include costs, as authorized by RCW
7 42.71A.765(5);

8 e. any other penalty the Court deems appropriate under RCW 42.17A.750, et seq.,
9 RCW 42.17A, or other law.

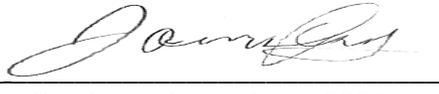
10 2. All costs of investigation and trial, including costs and reasonable attorneys' fees, as
11 authorized by RCW 42.71A.765(5).

12 3. All such other relief the Court deems appropriate.

13 //

14 Dated this 19th day of January, 2018.

15
16 By: 
17 Eric R. Stahlfeld, WSBA #22002
18 P.O. Box 552, Olympia, WA 98507
19 PH: 360.956.3482 | F: 360.352.1874
20 ESTahlfeld@freedomfoundation.com
21 *Counsel for Freedom Foundation*

22
23 By: 
24 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

1 **DECLARATION OF SERVICE**

2 I, Kirsten Nelsen, hereby declare under penalty of perjury under the laws of the State of
3 Washington that on January 19, 2018, I caused the foregoing Defendant Freedom Foundation’s
4 Complaint for Civil Penalties [and Injunctive Relief] for Past and Ongoing Violations of RCW
5 42.17A to be filed with the clerk, and caused a true and correct copy of the same to be sent via
6 personal service, to the following:

7 Service Employees International Union Healthcare 775NW
8 215 Columbia Street
9 Seattle, WA 98104

10 David Rolf, President
11 Service Employees International Union Healthcare 775NW
12 215 Columbia Street
13 Seattle, WA 98104

14 Adam Glickman, Secretary Treasurer
15 Service Employees International Union Healthcare 775NW
16 215 Columbia Street
17 Seattle, WA 98104

18 Dated: January 19, 2018

19 By: 
20 Kirsten Nelsen

EXPEDITE
No Hearing Set
Hearing is set
Date: October 5, 2018
Time: 9:00 a.m.
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

Defendant.

No. 18-2-00454-34

**DEFENDANT SEIU 775'S
MOTION TO DISMISS**

RELIEF REQUESTED

Plaintiff Freedom Foundation (“Foundation”), after having allegedly given the notice required by statute, and after having had its claims against Defendant SEIU 775 (“SEIU 775”) squarely and repeatedly rejected on their merits by both the Washington State Public Disclosure Commission (“the PDC”) and the Office of the Attorney General (“the Attorney General”), has now brought suit under the Fair Campaign Practices Act, RCW 42.17A (“FCPA”), in the name of the state, alleging that SEIU 775 has unlawfully failed to register and report as a political committee. *See* Claims I through IV, Amended Complaint pp. 14-18. For the reasons that follow, SEIU 775 submits this Motion To Dismiss pursuant to Civil Rules (“CR”) 12(b)(1) and 12(b)(6).

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EVIDENCE RELIED UPON

This motion relies upon the allegations in Plaintiff’s Complaint, legal authority and advisory opinions that have been issued by the PDC and the Attorney General, and documents referenced by the complaint that are appropriately considered in ruling on a motion brought under CR 12(b)(1) and 12(b)(6), all of which are included in the appendix to this motion or attached to the Declaration of Dmitri Iglitzin (“Iglitzin Dec.”), filed simultaneously herewith.

SUMMARY OF ARGUMENT

Plaintiff’s complaint suffers from multiple fatal defects.

Under the FCPA as it existed on the date the instant lawsuit was commenced, January 19, 2018, the attorney general and the prosecuting authorities were tasked with enforcement, and they had broad discretion and authority to investigate and bring civil actions against any person who is believed to have violated the requirements of the Act. *See former* RCW 42.17A.765(1), as enacted by Laws of 2010, Chapter 204, Sec. 1004 (copy of entire former statute attached hereto as Appendix (“App.”) A (pages 96-98)).¹ However, the FCPA also provided that a citizen may bring suit “in the name of the state” for a violation of the FCPA if he or she first files provides successive notices to the attorney general and the prosecuting attorney of the appropriate county, and those authorities nonetheless failed to commence an action, and the citizen brings such suit within ten days after their failure to do so. *See former* RCW 42.17A.765(4) (App. B).

The Foundation’s Complaint is inconsistent with the FCPA’s procedural requirements that were in effect on the date the instant citizen’s action was commenced because the Act’s enforcement provisions required a citizen plaintiff to file suit “within ten days” of the expiration of the window for the attorney general or county prosecutor to initiate an action against an

¹ A copy of just RCW 42.17A.765 as it existed prior to the 2018 amendments to the FCPA is also attached as Appendix B, for the Court’s convenience.

1 alleged violator. *Former* RCW 42.17A.765(4)(a)(ii), *id.* Here, however, the Foundation waited
2 until *nearly one year* from the tenth day following its second notice to the attorney general and
3 Thurston County prosecutor before filing suit against SEIU 775 in connection with the bulk of its
4 claims. It also waited *seventy-five (75) days* from the conclusion of the state officials' time to act
5 before filing suit against SEIU 775 in connection with its June 2016 allegation. This delay is
6 inexcusable and creates a procedural bar to the Foundation's lawsuit in its entirety.

7
8 Alternatively, the Foundation's suit is barred in its entirety because it did not comply
9 with the procedural requirements set forth in amendments to the Fair Campaign Practices Act
10 that became effective June 7, 2018, and which are currently in effect. In these most recent
11 amendments, the Washington State Legislature amended and corrected the FCPA's enforcement
12 provisions to ensure that citizen's actions cannot be prosecuted unless and until the plaintiff first
13 has filed a complaint with the agency with expertise and enforcement authority in this area of the
14 law, the PDC, and certain other related preconditions have been met. *See* RCW 42.17A.0001.
15 Because the instant suit was brought without any complaint having first been filed with the PDC,
16 this prerequisite to the further prosecution of this citizen's action suit has not been satisfied, and
17 the instant action must therefore be dismissed on that alternative basis.

18
19 Additionally, and again in the alternative, under both the current and former versions of
20 the FCPA, certain of the Foundation's claims, or parts thereof, must also be dismissed because
21 they fail to adequately plead facts from which SEIU 775's liability might follow. The FCPA's
22 definition of a "political committee" includes two "prongs" under which an entity can qualify as
23 a political committee – the "expenditures" prong and the "contributions" prong. *See former*
24 RCW 42.17A.005(37) (Appendix A, page 12); current RCW 42.17A.005(40); *Utter v. Bldg.*
25 *Indus. Ass'n of Washington*, 182 Wn.2d 398, 416-423, 341 P.3d 953 (2016) (using that
26

1 terminology). In the instant suit, the Foundation asserts that SEIU 775 is a political committee
2 under both prongs, and therefore violated the law by neither filing a statement of organization
3 nor reporting its contributions and expenditures to the PDC.

4 As a matter of law, SEIU 775 does not meet the definition of a political committee under
5 the expenditure prong.² The fact that a person has the expectation of making expenditures is
6 insufficient to make it a political committee under the “expenditures” prong. It must,
7 additionally, have as its “primary or one of [its] primary purposes” the goal of seeking to “affect,
8 directly or indirectly, governmental decision-making by supporting or opposing candidates or
9 ballot propositions.” *State v. Evans*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976) (citing A.G.O.
10 1973, June 8, 1973, No. 14, at 25-26). The Court of Appeals, in *Evergreen Freedom Foundation*
11 *v. Washington Education Association*, 111 Wn. App. 586, 49 P.3d 894 (2002), *rev. denied* 148
12 Wn.2d 1020 (2003) (“WEA”), made it clear that when a labor organization uses electoral political
13 activity as merely one means to achieve its legitimate broad nonpolitical goals, electoral political
14 activity cannot be said to be one of the organization’s primary purposes. Because the Foundation
15 nowhere alleges that SEIU 775’s electoral political activity is anything *other* than one means it
16 uses to achieve its legitimate broad nonpolitical goals, this claim by the Foundation fails and
17 should be dismissed.
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20 The Foundation’s alternative argument, that SEIU 775 was a political committee based
21 on the “expenditures” prong based on the alleged magnitude of its expenditures at one specific
22 point in time, June of 2016, is without merit because the FCPA does not sanction this “snapshot”
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26 ² SEIU 775 also vigorously disputes the Foundation’s claim that it is a “political committee” under the
“contribution” prong. However, it is not moving to dismiss that claim in particular through this CR 12(b)(6) motion,
other than through the more general arguments identified above.

1 approach to determining whether an organization has electoral political activity as one of its
2 primary purposes.

3 **AUTHORITY**

4 **A. STANDARD OF REVIEW.**

5 Where, as here, a motion to dismiss is brought pursuant to CR 12(b)(1), predicated on the
6 absence of subject matter jurisdiction, it is the plaintiff's burden to prove that such jurisdiction
7 exists. *See Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 807, 292
8 P.3d 147, 151 (2013), *aff'd on other grounds*, 181 Wn.2d 272, 333 P.3d 380 (2014) ("Once
9 challenged, the party asserting subject matter jurisdiction bears the burden of proof on its
10 existence."). *See also Evergreen Washington Healthcare Frontier LLC v. Dept. of Social and*
11 *Health Services*, 171 Wn. App. 431, 453, 287 P.3d 40 (2012) (holding that plaintiff's claims
12 were properly dismissed under CR 12(b)(1) because the superior court did not
13 have subject matter jurisdiction). "Unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can
14 attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency,
15 and in so doing rely on affidavits or any other evidence properly before the court." *St. Clair v.*
16 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989).³ Thus, the Court can properly consider material
17 outside of the Complaint in deciding whether it lacks subject matter jurisdiction.

18 For motions brought under CR 12(b)(6), dismissal is appropriate if it appears beyond a
19 reasonable doubt that the plaintiff could prove no set of facts consistent with the complaint that
20 would entitle him to the relief requested. *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692
21 P.2d 793 (1984). In such context, the Court must accept the plaintiff's factual allegations as true.
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26 ³ Federal cases applying provisions of the Federal Rules of Civil Procedure that are similar to Washington's Civil
Rules provide highly persuasive authority. *See, e.g., Beal v. City of Seattle*, 134 Wn.2d 769, 777, 954 P.2d 237
(1998).

1 *Tenore v. AT&T Wireless Svcs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998). However, the Court
2 need not accept a plaintiff's bare legal conclusions. *Haberman v. Wash. Pub. Power Supply Sys.*,
3 109 Wn.2d 107, 120, 744 P.2d 1032 (1987). If a plaintiff's claim remains legally insufficient
4 even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is
5 appropriate. *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005); *FutureSelect*
6 *Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 963, 331 P.3d 29 (2014).
7 Thus, where a plaintiff has not pled the factual predicate of his claim, dismissal is appropriate.
8 *See, e.g., Karstetter v. King Cty. Corr. Guild*, 1 Wn. App. 2d 822, 833, 407 P.3d 384 (2017), rev.
9 granted 190 Wn.2d 1018 (2018).

11 **B. THE FOUNDATION'S CITIZEN ACTION IS PROCEDURALLY BARRED**
12 **BECAUSE IT DID NOT COMMENCE ITS SUIT WITHIN TEN DAYS OF THE**
13 **ATTORNEY GENERAL AND PROSECUTING ATTORNEY'S FAILURE TO**
14 **BRING THEIR OWN ENFORCEMENT ACTIONS.**

15 The FCPA – in both its operative and prior forms – establishes a “comprehensive
16 enforcement scheme” detailing the conditions under which a would-be citizen plaintiff may bring
17 suit in the state's name. *West v. WA State Ass'n of Dist. & Mun. Court Judges*, 190 Wn. App.
18 931, 941, 361 P.3d 210 (2015). These conditions are mediated through interlocking notice
19 prerequisites and timing limitations.

20 As those prerequisites and timing limitations existed on the date the instant suit was
21 commenced, the citizen was first obligated to notify “the attorney general and the prosecuting
22 attorney in the county in which the violation occurred in writing that there is reason to believe
23 that some provision of this chapter is being or has been violated.” *See former RCW*
24 *42.17A.765(4)* (Appendix A, page 97; Appendix B, first page). The attorney general and
25 prosecuting attorney then had forty-five days from receiving such notice to commence their own
26 actions against the alleged violator. *Former RCW 42.17A.765(4)(a)(i)*. If neither did, the citizen

1 was then obligated to notify the same authorities that he or she “will commence a citizen’s action
2 *within ten days* upon their failure to do so.” *Former* RCW 42.17A.765(4)(a)(ii) (emphasis
3 added). The state officers themselves had ten days from receiving this “second notice” to file
4 suit, and if they did not do so within that timeframe, they had thereby “failed” to take an action
5 within the meaning of the FCPA. *Former* RCW 42.17A.765(4)(a)(iii); *see also* *Utter, supra*, 182
6 Wn.2d at 408-12 (explaining that “action” under the FCPA means filing a lawsuit, and not
7 merely referring the citizen’s claims to the PDC).

8
9 Under the plain terms of the enforcement provisions, the state officers’ “failure” to
10 commence an enforcement action – as measured by the expiration of the ten day window –
11 triggered a symmetrical 10-day period for the citizen to sue the alleged violator: the citizen could
12 not commence a lawsuit at his/her leisure; he/she was obligated to do so “within ten days” of
13 “their” – i.e., the state officers’ – “failure” to act. RCW 42.17A.765(4)(a)(ii). In other words, the
14 FCPA created a brief window for the would-be citizen plaintiff to act after his administrative
15 remedies have been completely exhausted. Because it is apparent that the instant complaint was
16 brought long after the closure of this brief window, the instant suit is barred.⁴

17
18 The time limitation on the “commence[ment] of a citizen’s action” is clear and
19 unambiguous. It turns on the statute’s use of the phrase “within ten days” and its connection to
20 the state officials’ “failure” to act as the moment at which the clock starts.⁵ “If a statute is clear
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23 ⁴ Although not directly relevant to this argument, it is worth noting that the 10-day window within which a citizen
24 suit may be brought was in no way altered by the recent amendments to the FCPA. *See* RCW 42.17A.775(3) (“To
25 initiate the citizen’s action, after meeting the requirements under subsection (2) of this section, a person must notify
26 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.”) (emphasis
added).

⁵ To be sure, the statute provides that the citizen must “notify” the state officers that he will commence a citizen suit
within ten days of their failure to act, without expressly commanding him to act consistently with the terms of his
notice. RCW 42.17A.765(4)(a)(ii). It would, however, be absurd and superfluous for a statute to require a litigant to
issue a notice, the terms of which he need not follow through on. *See Tingey v. Haisch*, 159 Wn.2d 652, 664, 152

1 on its face, its meaning is to be derived from the language of the statute alone.” *Kilian v.*
2 *Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19
3 P.3d 1030 (2001), *cert. denied*, 534 U.S. 1130, 122 S.Ct. 1070 (2002)). Further judicial
4 construction is not permitted to an “unambiguous statute even if [the court] believes the
5 Legislature intended something else but did not adequately express it.” *Id.* (citing *WA State*
6 *Coalition for the Homeless v. Dep’t of Soc. & Health Servs.*, 133 Wn.2d 894, 904, 949 P.2d 1291
7 (1997)) (holding that plain text of state discrimination law clearly limited scope of age
8 discrimination claims, irrespective of policy statement’s reference to protecting against age
9 discrimination and gloss providing for liberal construction of the statute).

11 The Foundation may be tempted to argue that only the state officials, not the citizen, are
12 beholden to a ten day filing period. To do so, the Foundation would have to eliminate, alter, or
13 move the critical phrase “within ten days.” But that is simply not permitted. The “court must
14 interpret the present language of the statute and not ‘rewrite explicit and unequivocal statutes.’”
15 *In re Estate of Black*, 153 Wn.2d 152, 162, 102 P.3d 796 (2004) (quoting *State v. Mollich*, 132
16 Wn.2d 80, 87-88, 936 P.2d 408 (1997)).

18 Moreover, in construing the FCPA, Washington courts have not disturbed the
19 enforcement provision’s plain meaning. In *WEA*, a Court of Appeals summarized the citizen’s
20 notice and timing obligations. Describing the relevant provisions, at the time codified under
21 RCW 42.17.400(4), the court said:

22 ...if 45 days after this first notice the prosecuting attorney and AG have not
23 commenced an action, the person must file a second notice with the AG and
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25 P.3d 1020 (2007) (“A reading that produces absurd results must be avoided because it will not be presumed that the
26 legislature intended absurd results.”) (citation and quotation marks omitted). At any rate, the implication that follows
from having to issue the second notice is a conceptually distinct and posterior consideration to the meaning of the
notice itself. It thus does not affect whether the notice *unambiguously promises* to file suit “within ten days” of the
state officials’ failure to act.

MOTION TO DISMISS - 8
CASE NO. 18-2-00454-34

1 prosecuting attorney notifying them that the person will *commence a citizen's*
2 *action within 10 days of this second notice* if neither the prosecutor nor the AG
3 acts. Finally, the AG and the prosecuting attorney must fail to bring such an
4 action within 10 days of receiving the second notice.

5 111 Wn. App. at 604 (emphasis added).⁶ The court also observed without further comment that
6 the plaintiff in that case “sent the AG the second letter on December 4, giving notice that [it]
7 would file a citizen’s action *within 10 days if the state took no action within that time.*” *Id.*
8 (emphasis added); *see also State ex. rel. Evergreen Freedom Found. v. National Educ. Ass’n,*
9 119 Wn. App. 445, 447, n.2, 81 P.3d 911 (2003) (reciting verbatim the notice and timing
10 requirements of what was then RCW 42.17.400(4)).

11 Even were the Court to construe the filing limitation language as ambiguous – which it is
12 not – there is good reason to believe that the state legislature intended to establish a time limit for
13 a citizen complainant to file FCPA claims.⁷ Very simply, a prospective defendant is entitled to
14 repose after a certain period of having a lawsuit looming over it head during the administrative
15 remedies phase of the litigation process. It is unremarkable that a potential plaintiff cannot
16 necessarily sit on his/her rights indefinitely, or to the expiration of a statutory limitations period,
17 after exhausting such remedies. A number of statutes recognize this right by requiring potential
18 plaintiffs to file suit within a certain number of days following the conclusion of an
19 administrative investigation, notwithstanding the existence of a separate statutory limitations
20 period. *See, e.g.,* 42 U.S.C. § 2000e-5(f)(1) (requiring ADA or Title VII plaintiff to bring suit
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24 ⁶ If anything, the only ambiguity created by this summary is whether the citizen’s time to file is coterminous with
25 the state officers’ (creating a “race to the courthouse”) or whether it follows the latter’s failure. Either way, *WEA*
26 makes clear that the commencement of the citizen’s suit is temporally limited by the second notice.

⁷ The enforcement provision separately contained (and currently contains) a substantive statute of limitations with
reference to “the date when the alleged violations occurred.” *Former* RCW 42.17A.765(4)(a)(iv); current RCW
42.17A.775(4). But that substantive bar works in tandem with, not against, the procedural bar providing a window to
act after administrative exhaustion.

1 within ninety days of EEOC’s termination of investigation); 29 U.S.C. § 626(e) (requiring same
2 for ADEA plaintiff).

3 This case is a perfect illustration of why the FCPA’s time limits following the conclusion
4 of the administrative process are so important. By the Foundation’s admission, it filed the “10-
5 day” notice required under former RCW 42.17A.765(4)(a)(ii) twice: first on February 1, 2017,
6 and again on October 26, 2017. Amended Complaint ¶ 12. The February 1 notice corresponds to
7 claims made in Counts I and II of the Amended Complaint (the “primary claims”), while the
8 October 26 notice corresponds to claims made in Counts III and IV (the June 2016 “alternative
9 claims”). The attorney general and prosecuting attorney therefore had until February 11, 2017 to
10 bring charges connected with the primary claims and until November 5, 2017 to bring charges
11 connected with the alternative claims. After those dates, it was incumbent on the Foundation to
12 bring a complaint within ten days. Instead, the Foundation filed its complaint in this action on
13 January 19, 2018. *See* Dkt. No. 1. Accordingly, 342 days – nearly an entire year – elapsed
14 between the tenth day following the Foundation’s second notice to the state officials regarding its
15 primary claims and the date the Foundation eventually filed its complaint. Likewise, 75 days
16 elapsed between the end of the window for the state officials to act on the Foundation’s
17 alternative allegations and their inclusion in the complaint. During those intervals, SEIU 775 was
18 left to guess as to whether the Foundation intended to sue it over these allegations. The
19 legislature enacted a post-administrative exhaustion time limit on bringing citizen’s action in
20 state court to prevent such abuses. Accordingly, the instant lawsuit must be dismissed.
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1 **C. ALTERNATIVELY, THE 2018 AMENDMENTS TO WASHINGTON’S FAIR**
2 **CAMPAIGN PRACTICES ACT REQUIRE THAT THIS ACTION BE**
3 **DISMISSED BECAUSE THE FOUNDATION DID NOT FIRST FILE A**
4 **COMPLAINT WITH THE PDC.**

5 In 2018, the Washington Legislature amended the FCPA to provide, in pertinent part, that
6 “A citizen’s action may be brought and prosecuted only if the person first has filed a complaint
7 with the [public disclosure] commission” and certain other conditions have been met. RCW
8 42.17A.775(2). The amended law retains the core citizen’s suit mechanism that has been part of
9 the campaign finance law since it was first enacted in 1972. However, effective June 7, 2018,
10 the law mandates that before bringing and prosecuting a citizen’s action in the name of the state,
11 a person who has reason to believe that a provision of the campaign finance law is being or has
12 been violated, must first file a complaint with the PDC. *Id.* Only after such complaint, and only
13 after the PDC, and in some cases the AG, have not taken certain actions with regard to that
14 complaint, and only after the AG and PDC have been provided specified notices, may the person
15 sue in the name of the state to remedy violations of the Act.

16 It is undisputed that the Foundation did not file a complaint with the PDC prior to
17 bringing and prosecuting this action. Thus, after June 7, 2018, the Foundation’s continued
18 prosecution of this action violates RCW 42.17A.775(2).⁸

19 **D. SEIU 775 IS NOT A POLITICAL COMMITTEE UNDER THE**
20 **“EXPENDITURES” PRONG.**

21 The FCPA defines a “political committee” as “any person (except a candidate or an
22 individual dealing with his or her own funds or property) having the expectation of receiving
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25 ⁸ SEIU 775 is aware that this Court has rejected this argument in a different case involving a citizen suit filed prior
26 to the effective date of the 2018 FCPA amendments. *See State of Washington ex. rel. Glen Morgan v. 34th
Legislative District Democrats*, No. 18-2-01654-34 (Super. Ct. Jul. 13, 2018) (Dixon, J.), Order Denying
Defendant’s 12(b)(6) Motion to Dismiss. Assuming the Court is disposed to rule on this issue in the same manner
here, SEIU 775 raises the argument solely to preserve it for appellate review.

1 contributions or making expenditures in support of, or opposition to, any candidate or any ballot
2 proposition.” RCW 42.17A.005(40). This definition is generally described as including two
3 separate prongs – the “contributions” prong and the “expenditures” prong. *See, e.g., Utter*, 182
4 Wn.2d at 416-423.

5 The Foundation alleges that SEIU 775 is a political committee under both prongs. *See*,
6 *e.g.*, Amended Complaint, ¶ 115 (SEIU 775 “is a political committee under the contributions
7 prong of RCW 42.17A.005(37)); ¶ 120 (SEIU 775 “is also a political committee under the
8 expenditures prong of RCW 42.17A.005(37); ¶ 136 (“In the alternative,” SEIU 775 “was a
9 political committee in June 2016” under the expenditures prong).

10 Pursuant to well-established law, the fact that a person has the expectation of making
11 expenditures is insufficient to make it a political committee under the “expenditure” prong. It
12 must, additionally, have as its “primary or one of [its] primary purposes” the goal of seeking to
13 “affect, directly or indirectly, governmental decision-making by supporting or opposing
14 candidates or ballot propositions.” *Evans*, 86 Wn.2d at 509 (citing A.G.O. 1973, June 8, 1973,
15 No. 14, at 25-26.). *See also Utter*, 182 Wn.2d at 425 (“the support of a candidate or initiative
16 must be “the primary or one of the primary purposes” of a person expending funds for the State
17 to subject them to regulation as a political committee based on their expected expenditures”).

18 Subsequent to *State v. Evans*, in *WEA*, the Court of Appeals explained how this test
19 applies to labor unions. In that case, the Court noted that “if electoral political activity is merely
20 one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral
21 political activity cannot be said to be one of the organization’s primary purposes.” *WEA*, 111
22 Wn. App. at at 600. Applying that test to the case before it, the Court noted that the Washington
23 Education Association, like any other labor union, had the purpose of “enhanc[ing] the economic
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1 and professional security of its members,” and accomplished this purpose “not only by
2 conducting contract negotiations and strikes, but also by legislative lobbying and electoral
3 political activity when its members’ economic security is implicated.” *Id.* at 601. After
4 comparing the trial court’s findings and engaging in this analysis, *WEA* held that based on the
5 uncontested facts, the Washington Education Association was not a political committee under
6 the “maker of expenditures” prong. *Id.* at 602.

7
8 As is clear from the allegations contained in the Amended Complaint, SEIU 775, like the
9 Washington Education Association, is a labor union operating in the State of Washington. It is
10 well established that labor organizations in Washington State may properly use dues money “as a
11 source for political contributions.” *State ex rel. Evergreen Freedom Found. v. Washington Educ.*
12 *Ass’n*, 140 Wn.2d 615, 631, 999 P.2d 602, 611 (2000), *as amended* (June 8, 2000).

13 The Complaint alleges that SEIU 775 does use dues money in that manner. *See, e.g.*,
14 Amended Complaint, ¶¶ 20-34. However, as was discussed above, “if electoral political activity
15 is merely one means the organization uses to achieve its legitimate broad nonpolitical goals,
16 electoral political activity cannot be said to be one of the organization’s primary purposes.”
17 *WEA*, 111 Wn. App. at 600.

18
19 A set forth with clarity in SEIU 775’s Constitution and Bylaws, SEIU 775’s mission “is
20 to unite the strength of all working people and their families, to improve their lives and lead the
21 way to a more just and humane world.” Iglitzin Dec., Ex. A, Article 1.5 (p.3). Its goals are to:

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- Lift caregivers out of poverty.
 - Build worker organizations that are powerful, sustainable, and scalable.
 - Transform health and long-term care to ensure quality and access for all.
 - Increase prosperity and reduce inequality for working people.
- 24
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26 *Id.*, Article 1.5. Electoral political activity is at most just one of **eight** means by which SEIU 775
seeks to accomplish these goals:

1 **1.6 Strategies to Achieve Our Goals.** We will achieve these goals with the
2 following strategies –

- 3 1. Build worker leadership and activism.
- 4 2. Help workers form unions and other powerful organizations.
- 5 3. Hold politicians accountable.
- 6 4. Bargain strong contracts and provide quality services and benefits.
- 7 5. Advance pro-worker policy through influencing government, industry,
8 and public opinion.
- 9 6. Build strategic partnerships.
- 10 7. Govern the Union democratically and use our resources responsibly.
- 11 8. Adapt. Innovate. Create.

12 *Id.* (pp. 3-4).⁹

13 It is clear beyond any dispute, based on these stated goals, that electoral political activity
14 is not one of SEIU 775’s primary purposes, but is instead *just one of the means by which SEIU*
15 *775 seeks to achieve* “its legitimate broad nonpolitical goals.” *WEA*, 111 Wn. App. at 600. The
16 Foundation has not pled to the contrary.

17 This holding flows inevitably from the Court of Appeals’ decision in *WEA*. In that case,
18 the Court first noted the serious implications that would come from concluding that the
19 defendant labor organization was obligated to register and report as a political committee. It
20 stated:

21 A finding that *WEA* was a political committee would require *WEA* to file
22 detailed reports to the PDC of all bank accounts, all deposits and donations, and
23 all expenditures, including the names of each person contributing funds. All
24 funds would have to be reported, even those used for traditional labor union
25 activities not connected with electoral campaign activity, such as collective
26 bargaining, member representation, and other teacher assistance.

111 Wn. App. at 598 (citations omitted). It went on to note, approvingly:

⁹ SEIU 775’s Constitution and By-Laws are appropriately reviewed by this Court on a CR 12(b) motion because they were expressly referenced and relied upon by the Plaintiff in its Amended Complaint, e.g., at ¶¶ 56, 67-68, and 72-73. See *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 827, 355 P.3d 1100 (2015). See also *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168 (2008) (“Documents whose contents are alleged in a complaint but which are not physically attached to the pleading may ... be considered in ruling on a CR 12(b)(6) motion to dismiss.”); *Sebek v. City of Seattle*, 172 Wn. App. 273, 275, 290 P.3d 159 (2012) (accord).

1 The trial court considered the WEA's goals, core values, pronouncements, and the
2 implementation of those pronouncements. The trial court found that WEA's
3 "purpose [was] to enhance the economic and professional security of its
4 members." Clerk's Papers (CP) at 995. WEA accomplishes this not only by
5 conducting contract negotiations and strikes, but also by legislative lobbying and
6 electoral political activity when its members' economic security is implicated.

7 *Id.* at 601. Based on these uncontested facts, the Court held that WEA was not a political
8 committee as a maker of expenditures. *Id.*

9 The Foundation has not alleged that SEIU 775's goals, core values, pronouncements,
10 implementation of its pronouncements, purpose, or other activities differ in any pertinent way
11 from those of the Washington Education Association on the dates relevant to the litigation in
12 *WEA*. As noted earlier, the Court in *WEA* stated that "if electoral political activity is merely one
13 means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political
14 activity cannot be said to be one of the organization's primary purposes." *Id.* at 600. That is
15 self-evidently as true of SEIU 775 in the instant case as it was of the Washington Education
16 Association in *WEA*.¹⁰

17 It is true that, as stated in *WEA*, an organization's stated goals are not *in every case*
18 dispositive of the issue of whether electoral political activity is actually one of its primary
19 political purposes. An organization could conceivably "merely restate[] its primary political
20 purpose in broad nonpolitical terms." *WEA*, 111 Wn. App. at 600. However, the Foundation's
21 Amended Complaint is devoid of any factual allegation that this limited exception applies to

22 ¹⁰ The Court in *WEA* also discussed a "nonexclusive list of analytical tools a court may use when evaluating the
23 evidence," which included: "(1) the content of the stated goals and mission of the organization; (2) whether the
24 organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the
25 organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the
26 organization uses means other than electoral political activity to achieve its stated goals and mission. *Id.* at 600.
However, *WEA* is clear that these are factual questions that may need to be addressed in answering the ultimate
question, which is whether an organization has electoral political activity as one of its primary purposes. Where, as
in *WEA* (and in the instant case), there is no factual dispute that electoral political activity is "merely one means the
organization uses to achieve its legitimate broad nonpolitical goals," the purpose to be achieved by recourse to the
"nonexclusive list of analytical tools" has been accomplished. *Id.*

1 SEIU 775. WEA is therefore dispositive on the cause of action set forth in the Foundation's suit
2 against SEIU 775.

3 Precisely the same conclusion was reached in 2015 by both the Attorney General and the
4 PDC, when the Foundation brought this same allegation about SEIU 775 in the form of a
5 complaint to the Attorney General. In that case, the Foundation, as here, alleged that SEIU 775
6 was obligated to report to the PDC under the expenditures prong because it had electoral political
7 activity as one of its primary purposes. The Attorney General referred the matter for
8 investigation to the PDC and PDC staff rejected the claim based on precisely the same WEA
9 analysis noted above, concluding:
10

11 No evidence was submitted to contradict SEIU 775's public statements
12 concerning the union's missions, goals and strategies to achieve its goals. No
13 evidence was presented demonstrating that SEIU 775 has merely restated its
primary political purpose in broad nonpolitical terms.

14 Iglitzin Dec., Ex. B, at pages 3-4 (Executive Summary and Staff Analysis, PDC Case No. 15-
15 070). The PDC adopted its staff's conclusion. Iglitzin Dec., Ex. C at pages 3-4. The Attorney
16 General then accepted the PDC's recommendation regarding this allegation. Iglitzin Dec., Ex
17 D.

18 The PDC reached this conclusion a second time regarding SEIU 775 on February 1,
19 2017, when it was called upon to review a complaint filed by the Foundation with the Attorney
20 General on December 15, 2016. After a second thorough review of all of the facts and
21 circumstances regarding the Foundation's contentions, PDC staff again concluded that no
22 evidence had been submitted to contradict SEIU 775's public statements concerning the union's
23 missions, goals and strategies to achieve its goal, or demonstrating that SEIU 775 has merely
24 restated its primary political purpose in broad nonpolitical terms. It went on to state:
25
26

1 Staff found that SEIU 775’s electoral political activity, described by its strategy to
2 “hold politicians accountable,” may have furthered its stated goals and mission, as
3 well as possibly the strategy to advance pro-worker policy through influencing
4 government.

5 However, no evidence was found that SEIU 775 has substantially achieved its
6 stated goals and mission through a favorable outcome in an election, nor was a
7 specific election campaign cited in the allegations. It is clear that SEIU 775 uses
8 means other than electoral political activity to achieve its stated goals.

9 Iglitzin Dec., Ex. E (February 1, 2017, Staff Memo, PDC Case No. 12270). The PDC adopted
10 its staff’s conclusion. Iglitzin Dec., Ex. F.

11 The same conclusion was reached by the PDC regarding the identical allegation when it
12 was brought by the Foundation against a different labor union, the Washington Federation of
13 State Employees (“WFSE”). In that case, in evaluating the argument that WFSE was obligated
14 to report to the PDC because it had electoral political activity as one of its primary purposes,
15 PDC staff rejected the claim based on precisely the same *WEA* analysis noted above, noting that
16 “[n]o evidence was found to dispute that WFSE’s political activity is merely one means it uses to
17 achieve its broad nonpolitical goals, or that it has merely restated a primary political purpose in
18 broad nonpolitical terms.” Iglitzin Dec., Ex. G (March 17, 2017, Staff Memo, PDC Case No.
19 14266), at 4. This recommendation, too, was first adopted by the PDC, then accepted by the
20 Attorney General. Iglitzin Dec., Ex. H at 1; Iglitzin Dec., Ex. I, at 4. And even more recently,
21 on October 19, 2017, the Attorney General yet again rejected this exact same contention, levelled
22 on that occasion against Teamsters Local Union No. 117. *See* Iglitzin Dec., Ex. J at 4.¹¹

23
24 ¹¹ The above-referenced PDC and Attorney General conclusions are appropriately entitled to deference by this court,
25 because they fall within the opinion agencies’ area of expertise. *See, e.g., Hill v. Garda Cl. Northwest, Inc.*, 198
26 Wn. App. 326, 404 n. 19, 394 P.3d 390 (2017) (Washington State Department of Labor and Industries
administrative policy entitled to deference, even though that policy had not been enacted by the agency through
rulemaking); *Pellino v. Brink’s Inc.*, 164 Wn. App. 668, 688, 267 P.3d 383, 395 (2011) (same, noting that “[a]n
agency’s interpretation of law is entitled to deference ‘to the extent that it falls within the agency’s expertise in a
special area of the law.’”) (quoting *Plum Creek Timber Co. v. State Forest Practices Appeals Bd.*, 99 Wn. App. 579,
588, 993 P.2d 287 (2000)).

1 Moreover, with the exception of the arguments it makes in relation to June of 2016,
2 addressed below, the Foundation did not allege that “a majority” of SEIU 775’s expenditures
3 were spent on electoral political activity during the two years prior to the date this Complaint
4 was filed, which is “considered an important part of the balancing of factors” prescribed by the
5 court in *WEA*, as has repeatedly been stated by the PDC (see, *e.g.*, App. A, at 9; Iglitzin Dec., Ex.
6 C, at 9).¹²

7
8 The evidence that has been alleged to exist establishes beyond a reasonable dispute that
9 SEIU 775 is not a political committee under the expenditures prong, and it is therefore not
10 subject to the registration and recording requirements of the FCPA. Accordingly, this portion of
11 the Foundation’s claims against SEIU 775 should be dismissed.¹³

12 **E. SEIU 775 WAS NOT A POLITICAL COMMITTEE UNDER THE**
13 **“EXPENDITURES” PRONG IN JUNE OF 2016.**

14 Having failed in its multiple efforts to persuade either the PDC or the Attorney General to
15 find that SEIU 775 is a political committee under the expenditures prong due to its general and
16 ongoing activities, the Foundation has alleged, in the alternative, that SEIU 775 was a political
17 committee in June of 2016, a month when it allegedly spent more than half of its revenue on
18 political contributions.
19
20
21

22 ¹² The statute of limitations for a citizen’s action such as this is only two years. *Former RCW 42.17A.765(4)(a)(iv)*.

23 ¹³ A trial court may, where appropriate, dismiss a portion of or theory supporting a particular claim. *See Brandt v.*
24 *Medtronic, Inc.*, No. 12-2-07422-4 (Wash. Super. Ct. Sep. 19, 2013) (granting CR 12(b)(6) motion with respect to a
25 portion of Plaintiff’s loss of consortium claim and denying the motion as to the remainder of the loss of consortium
26 claim). *See also Nguyen v. IBM Lender Bus. Process Servs. Inc.*, CV11-5326RBL, 2011 WL 6130781, at *2 (W.D.
Wash. Dec. 8, 2011) (dismissing a portion of a breach of contract claim under Rule 12(b)(6) and allowing another
portion of the claim to proceed); *Cenveo Corp. v. Celum Solutions Software GMBH & Co KG*, 504 F. Supp. 2d 574,
579 (D. Minn. 2007) (dismissing portion of defamation claim deriving from certain “non-actionable statements”
while maintain portion of claim derived from other statements). This court may therefore dismiss the Foundation’s
claims to the extent they argue SEIU 775 is a “political committee” under the expenditure prong, while maintaining
the claims to the extent they argue it is a “political committee” under the contribution prong.

1 The Foundation’s argument boils down to the theory that that an organization can be
2 identified as a “political committee” for a *single, arbitrarily selected month* over the course of its
3 existence. This theory contravenes the plain language of the act, the judicial opinions that
4 interpret it, and common sense.

5 *WEA* stated that the analysis of an entity’s primary purpose should be directed toward
6 “the period in question.” *WEA*, 111 Wn. App. at 600. But the relevant period analyzed in *WEA*
7 was much longer than just one month. It instead involved an examination of “*WEA’s* goals, core
8 values, pronouncements, and the implementation of those pronouncements ... [*p*]receding and
9 during the 1996 election cycle.” *Id.* at 596, 601 (emphasis added). Read together with the case’s
10 facts, *WEA’s* holding requires courts to holistically examine an organization’s mission statement
11 and activities over the course of an election cycle, which typically spans several calendar years,¹⁴
12 to identify its primary purposes. *WEA* thus directly contradicts the Foundation’s contention that a
13 one-month inquiry is appropriate.

14
15
16 *Utter* framed the scope of this inquiry in the same way, holding (ultimately) that a
17 genuine issue of material fact existed as to whether the defendant, BIAW, “had the support of a
18 candidate as one of its primary purposes during the 2007-2008 campaign season.” *Utter*, 182
19 Wn.2d at 427 (emphasis added). As evidence that could support a factfinder’s affirmative
20 conclusion, the Court cited BIAW’s meeting minutes, letters, and newsletters, which described
21 the group’s electoral aspirations “this campaign season,” “the next two years,” and “this year.”
22 *Id.* at 427-28. Thus, in accord with the decision of the Court of Appeals in that litigation, the
23 Supreme Court recognized that the relevant period of inquiry for an entity’s primary purposes
24

25
26 ¹⁴ The FCPA defines an “election cycle” as “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.” RCW 42.17A.005(18). Thus, an election cycle for most offices will last two years, at least.

1 was, at the shortest, an election cycle. Implicit in the Supreme Court’s reasoning is the
2 understanding that only over the course of an entire election cycle can one truly get a picture of a
3 group’s primary purposes.¹⁵

4 A common sense reading of the FCPA supports this approach. The statute defines a
5 “political committee” in terms of a person or group’s “expectation.” To qualify, the person must
6 expect to “receiv[e] contributions or mak[e] expenditures” which will be used to support or
7 oppose a candidate or ballot proposition. RCW 42.17A.005(37). Under the Foundation’s reading,
8 an entity’s expectation in this regard might oscillate wildly from month to month. One month it
9 might expect to receive or spend vast sums, and the next month (or stretch of months), nothing.
10 Anyone remotely familiar with campaign finance knows that this is not how political committees
11 operate. The vast majority of organizations plan their budgets, fundraising activities, and
12 advertising campaigns based on at least one calendar year or election cycle. *See, e.g.,* Karen
13 Fabean, *Your PAC is a Small Business: Are You Running It Like One?*, National Association of
14 Business Political Action Committees, [http://www.nabpac.org/your-pac-is-a-small-business-are-](http://www.nabpac.org/your-pac-is-a-small-business-are-you-running-it-like-one)
15 [you-running-it-like-one](http://www.nabpac.org/your-pac-is-a-small-business-are-you-running-it-like-one) (last visited Oct. 23, 2017) (“Developing an annual strategic plan for
16 your PAC that identifies opportunities for program enhancements and growth, an operating
17 budget and a timeline is essential to success.”). Accordingly, they “expect” to receive
18 contributions and make expenditures over the course of a year or a period of years, not for any
19 given month. Any increment of time shorter than a year is susceptible to unforeseen budgetary
20 shortfalls and surpluses that can throw campaign plans into disarray.
21
22
23
24

25 ¹⁵ *Utter* at one point used the phrase “during any relevant time period” in discussing the balancing test imposed by
26 the First Amendment regarding disclosure requirements versus the government’s interest in providing the public
with campaign finance information. 182 Wn. 2d at 430. However, *Utter* in no way suggested that a relevant time
period could be less than a campaign cycle or calendar year.

1 The Foundation’s proposed interpretation of the law would render the FCPA both over-
2 and under-inclusive: over-inclusive because many entities, like SEIU 775, for whom electoral
3 politics is only one of *many* means to achieve its overall program, would be caught in its net
4 whenever its political-related revenue or expenditures for a given month inadvertently exceeded
5 an arbitrary threshold; and under-inclusive because entities with primarily electoral ends could
6 game the system and avoid “political committee” status by squeezing their electoral activities (or
7 at least their accounting thereof) into just a few months. Entities would be required to register or
8 deregister as a committee on a month-by-month basis, their status as a political committee
9 constantly in flux. The Washington legislature did not draft the critical definition of a “political
10 committee” – the subject of the FCPA’s entire regulatory scheme – intending such absurd
11 results, and this Court should dismiss the Foundation’s claims based on this theory as
12 unsupported by Washington law. *See State v. Ervin*, 169 Wn.2d 815, 824-25, 239 P.3d 354
13 (2010) (“we presume the legislature does not intend absurd results and, where possible, interpret
14 ambiguous language to avoid such absurdity”).

15
16
17 **F. RCW 42.17A.465(4) DOES NOT PROVIDE FOR AN AWARD OF FEES**
18 **AGAINST THE DEFENDANT IN A CITIZEN ACTION SUIT.**

19 The Foundation’s request for attorneys’ fees must also be denied because the plain
20 language of the FCPA makes clear that a successful plaintiff in a citizen suit may only recoup
21 attorney fees from the *State*, not the Defendant. RCW 42.17A.775(5).¹⁶

22 In interpreting a statute, courts “first look[] to its plain language. If the plain language of
23 the statute is unambiguous, then the court’s inquiry is at an end,” and “[t]he statute is to be
24

25
26 ¹⁶ This was also true under the prior version of the FCPA, as this Court, like two other Thurston County Superior
Court judges before it, determined in *State of Washington ex. rel. Glen Morgan v. 34th Legislative District*
Democrats, No. 18-2-01654-34 (Super. Ct. Jul. 13, 2018) (Dixon, J.), Order Denying Defendant’s 12(b)(6) Motion
to Dismiss.

1 enforced in accordance with its plain meaning.” *State v. Armendariz*, 160 Wn.2d 106, 110, 156
2 P.3d 201 (2007) (citations omitted). “A statute is ambiguous if susceptible to two or more
3 reasonable interpretations, but a statute is not ambiguous merely because different interpretations
4 are conceivable.” *HomeStreet, Inc. v. State Dep’t of Revenue*, 166 Wn.2d 444, 453, 210 P.3d
5 297 (2009).

6 Here, the plain language of the 2018 amendments to the FCPA makes it abundantly clear
7 that the Foundation is not entitled to attorney fees from SEIU 775. RCW 42.17A.775(5) states
8 that “[i]f the person who brings the citizen’s action prevails, . . . he or she shall be entitled to be
9 reimbursed by *the state for reasonable costs and reasonable attorneys’ fees the person*
10 *incurred.*” (Emphasis added.) This provision is susceptible to just one interpretation: when a
11 plaintiff prevails in a citizen’s action suit, his/her claim for reimbursement for reasonable
12 attorney fees lies with the *State*, not the Defendant. Therefore, the Foundation’s claim for fees is
13 misplaced and should be dismissed.
14

15 CONCLUSION

16 For the foregoing reasons, SEIU 775 respectfully requests that the Court grant the instant
17 motion and order Plaintiff’s claims dismissed, as described above.
18

19 DATED this 28th day of August, 2018.

20 
21 Dmitri Iglitzin, WSBA #17673
22 SCHWERIN CAMPBELL BARNARD
23 IGLITZIN & LAVITT LLP
24 18 West Mercer Street, Suite 400
25 Seattle, WA 98119-3971
26 Phone: (206) 257-6003
Fax: (206) 257-6038

Attorneys for SEIU 775

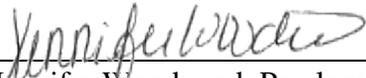
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DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the state of Washington that on August 28, 2018, I caused the foregoing Defendant SEIU 775's Motion to Dismiss to be filed with the Thurston County Superior Court, and a true and correct copy of the same to be sent via e-mail and US mail to:

James G. Abernathy
Eric R. Stahlfeld
c/o Freedom Foundation
PO Box 552
Olympia, WA 98507
E-mail: jabernathy@myfreedomfoundation.com
E-mail: EStahlfeld@freedomfoundation.com
E-mail: KNelsen@myfreedomfoundation.com

Signed in Seattle, Washington, this 28th day of August, 2018.


Jennifer Woodward, Paralegal

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)
) ss
COUNTY OF THURSTON)

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

FILED

DEC - 7 2018

Superior Court
Linda Myhre Enlow
Thurston County Clerk

Expedite
 No hearing set
 Hearing is set
Date: December 7, 2018
Time: 9:00 AM
Judge/Calendar: Dixon

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.

SERVICE EMPLOYEES INTERNATIONAL
UNION 775, et al.,

Defendants.

No. 18-2-00454-34

~~[Proposed]~~ ORDER DENYING
DEFENDANTS SEIU LOCAL 775'S
MOTION FOR CERTIFICATION OF A
QUESTION FOR INTERLOCUTORY
APPEAL

This matter came before the Court on the date below pursuant SEIU Local 775's Motion for Certification of a Question for Interlocutory Appeal. Plaintiff Freedom Foundation was represented by Eric Stahlfeld. Defendant SEIU Local 775 was represented by Dmitri Iglitzin and Benjamin Berger.

The Court having considered the following:

1. Defendant SEIU Local 775's Motion for Certification of a Question for Interlocutory Appeal;

1 2. Plaintiff Freedom Foundation's Response to Motion to Dismiss Defendant SEIU 775's
2 Motion for Certification of a Question for Interlocutory Appeal;

3 3. Declaration of Maxford Nelsen in Support of Plaintiff's Response to Defendant SEIU
4 775's Motion for Certification of a Question for Interlocutory Appeal.

5 4. Defendant's Reply in Support of Motion for Certification of a Question for Interlocutory
6 Appeal;

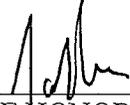
7 5. _____;

8 6. _____;

9 and the argument herein, and the court otherwise being fully advised on the matter herein, now,
10 therefore:

11 It is hereby ORDERED, ADJUDGED, AND DECREED that Defendant SEIU 775's
12 Motion for Certification of a Question for Interlocutory Appeal should be and hereby is DENIED.

13
14 DONE IN OPEN COURT this 7 day of December, 2018.

15
16 

THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

James Dixon

17 Presented by:

18 

19 Eric R. Stahlfeld, WSBA #22002

20 ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

21 Approved as to Form by:

22
23 _____
DMITRI IGLITZIN, WSBA #17673

24 ATTORNEY FOR DEFENDANTS

[PROPOSED] ORDER DENYING SEIU 775's
MOTION FOR CERTIFICATION
No. 18-2-00454-34

Benjamin Berger

BENJAMIN BERGER, WSBA #52909

ATTORNEY FOR DEFENDANTS

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1 EXPEDITE

2 No Hearing Set

3 Hearing is set

4 Date: _____

5 Time: _____

6 Judge/Calendar: _____

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THURSTON COUNTY

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

12 Plaintiff,

13 v.

14 SEIU 775, a labor organization,

15 Defendant.

No. 18-2-00454-34

**DEFENDANT SEIU 775'S
NOTICE OF DISCRETIONARY
REVIEW TO THE COURT OF
APPEALS, DIVISION II**

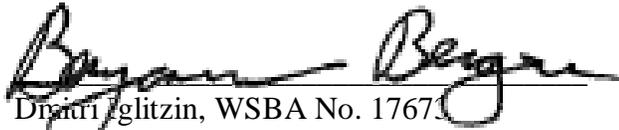
16 Pursuant to RAP 5.1 and 5.3, Defendant SEIU 775 seeks discretionary review by the
17 Court of Appeals, Division II, of the November 9, 2018, Thurston County Superior Court Order
18 Denying Defendant SEIU 775's Motion to Dismiss, a true and correct copy of which is attached
19 hereto. Specifically, SEIU 775 seeks review of the Superior Court's finding that *former* RCW
20 42.17A.765(4)(a) does not establish a ten-day window for citizen action plaintiffs to file lawsuits
21 against alleged violators of Washington's campaign finance laws, which commences upon the
22 Attorney General's and Prosecuting Attorney's failing to initiate their own enforcement actions.

23 The names and contact information of the attorneys representing Plaintiff Freedom
24 Foundation are:

25
26 // // // //

1 James G. Abernathy, WSBA No. 48801
2 Eric R. Stahlfeld, WSBA No. 22002
3 Freedom Foundation
4 P.O. Box 552
5 Olympia, WA 98507
6 (253) 956-3482
7 jabernathy@freedomfoundation.com
8 estahlfeld@freedomfoundation.com

9 DATED this 10th day of December, 2018.

10 

11 Dmitri Iglitzin, WSBA No. 17671
12 Jennifer L. Robbins, WSBA No. 40861
13 Danielle Franco-Malone, WSBA No. 40979
14 Benjamin Berger, WSBA No. 52909
15 SCHWERIN CAMPBELL BARNARD
16 IGLITZIN & LAVITT, LLP
17 18 West Mercer Street, Suite 400
18 Seattle, WA 98119-3971
19 Phone: (206) 257-6003
20 *iglitzin@workerlaw.com*
21 *robbins@workerlaw.com*
22 *franco@workerlaw.com*
23 *berger@workerlaw.com*

24 *Attorneys for Defendant SEIU 775*

DECLARATION OF SERVICE

I, Genipher Owens, declare under penalty of perjury under the laws of the state of Washington that on this 10th day of December, 2018, I caused the foregoing Defendant SEIU 775's Notice of Discretionary Review to the Court of Appeals, Division II, to be filed with the Clerk of the Thurston County Superior Court and true and correct copies of the same to be delivered via email, per agreement of counsel, to:

James G. Abernathy
JAbernathy@myfreedomfoundation.com

Eric R. Stahlfeld
EStahlfeld@freedomfoundation.com

Kirsten Nelsen
KNelsen@myfreedomfoundation.com

Jennifer Matheson
JMatheson@freedomfoundation.com

General mailbox
Legal@myfreedomfoundation.com

Signed in Seattle, Washington, this 10th day of December, 2018.


Genipher Owens, Paralegal

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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 NOV -9 AM 11:57

Linda Myhre Enlow
Thurston County Clerk

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Expedite
 No hearing set
 Hearing is set
Date: November 9, 2018
Time: 9:00AM
Judge/Calendar: Dixon

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

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

NO. 18-2-00454-34

Plaintiff,

~~[Proposed Order Denying]~~ DEFENDANT
SEIU 775's MOTION TO DISMISS

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION 775, et al.,

18-2-00454-34
ORDYMT 63
Order Denying Motion Petition
4205060

Defendants.



This matter came before the Court on the date below pursuant to Defendant SEIU 775's
Motion to Dismiss. Plaintiff Freedom Foundation was represented by Eric Stahlfeld. Defendant
SEIU 775 was represented by Dmitri Iglitzin and *Patrick Benjamin Berger*

The Court having considered the following:

1. Plaintiff Freedom Foundation's Complaint;
2. Plaintiff Freedom Foundation's First Amended Complaint;



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JD

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3. Defendant SEIU 775's Motion to Dismiss, filed August 28, 2018 ("8-28 Motion to Dismiss);

4. Declaration of Dmitri Iglitzin in Support of SEIU 775's 8-28 Motion to Dismiss, ~~having~~
~~stricken the following Exhibits:~~

DT
JA

_____ ;
_____ ;

5. Plaintiff Freedom Foundation's Response to SEIU 775's 8-28 Motion to Dismiss;

6. Declaration of Eric R. Stahlfeld on Response to SEIU 775's 8-28 Motion to Dismiss

7. Declaration of James Abernathy on Response to SEIU 775's 8-28 Motion to Dismiss

8. SEIU 775's Reply

9. _____ ;
_____ ;

10. _____ ;

and the argument herein and the court otherwise being fully advised on the matter herein, now, therefor,

It is hereby ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss, filed on August 28, 2018, should be and hereby is DENIED, *except Freedom Foundation is not entitled to be awarded any attorneys fees from SEIU 775 should it ultimately prevail in this matter.*
DONE IN OPEN COURT this ___ day of November, 2018.

JA
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DI



THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

1 Presented by:

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3
4 Eric R. Stahlfeld, WSBA #22002

5 ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

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7 Approved as to Form by:

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10 DMITRI IGLITZIN, WSBA #17673

11 ATTORNEY FOR DEFENDANT

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FREEDOM FOUNDATION

February 12, 2019 - 4:45 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52726-0
Appellate Court Case Title: Freedom Foundation, Respondent v. SEIU 775, Petitioner
Superior Court Case Number: 18-2-00454-1

The following documents have been uploaded:

- 527260_Answer_Reply_to_Motion_20190212164305D2054821_3645.pdf
This File Contains:
Answer/Reply to Motion - Response
The Original File Name was 2019-02-10 FF RESP to MOT for Discretionary Review FFinal.pdf
- 527260_Other_20190212164305D2054821_3756.pdf
This File Contains:
Other - Appendix for Response
The Original File Name was 2019-02-11 Appendix RESP MOT to Discretionary Review w appendices.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
- berger@workerlaw.com
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- iglitzin@workerlaw.com
- jmatheson@freedomfoundation.com
- lawyer@stahlfeld.us
- robbins@workerlaw.com

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Sender Name: Kirsten Nelsen - Email: knelsen@freedomfoundation.com

Filing on Behalf of: Sydney Paige Phillips - Email: sphillips@freedomfoundation.com (Alternate Email: SPhillips@freedomfoundation.com)

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