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NO. 52726-0-II

No. 97604-0

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

SEIU 775,
Petitioner

v.

FREEDOM FOUNDATION,
Respondent

**PETITIONER SEIU 775's MOTION FOR DISCRETIONARY
REVIEW**

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I. IDENTITY OF PETITIONER

The petitioner is SEIU 775, which is the Defendant below.

II. DECISION BELOW

SEIU 775 seeks discretionary review of the trial court's ruling in its Order Denying Defendant SEIU 775's Motion to Dismiss that Plaintiff/Respondent Freedom Foundation's citizen action is not procedurally barred. Thurston County Superior Court Judge James Dixon entered the order on November 9, 2018.

III. ISSUE PRESENTED FOR REVIEW

The following issue is presented for review: whether the trial court erred in denying SEIU 775's motion to dismiss Plaintiff Freedom Foundation's citizen suit under the Fair Campaign Practices Act ("FCPA" or "Act") because the Freedom Foundation ("Foundation") did not, as required by *former* RCW 42.17A.765(4)(a), file its citizen action suit within ten days of the Attorney General's and Prosecuting Attorney's failure to initiate their own enforcement actions.

IV. STATEMENT OF THE CASE

Petitioner SEIU 775 is a labor organization that represents long-term care workers and whose mission is to unite the strength of all working people and their families, to improve their lives and lead the way

to a more just and humane world. App. 157. SEIU 775's goals include lifting caregivers out of poverty, transforming health and long-term care to ensure quality and access for all and increasing prosperity and reducing inequality for working people. *Id.* The Foundation holds itself out as a Washington nonprofit organization. *Id.* at 34 ¶ 6.

According to the Foundation, on December 14, 2016, it submitted a letter and notice to the Washington Attorney General and relevant county prosecutors (together, the "public officials") alleging that SEIU 775 was a political committee within the meaning of the FCPA and had therefore violated the Act by failing to file a statement of organization and disclosure reports with the Public Disclosure Commission ("PDC"). *Id.* at 33 ¶ 2 and 35 ¶ 11. The Foundation's allegations were then referred to the PDC on January 5, 2017. *Id.* at 11. On February 1, 2017, the PDC issued a memorandum concluding that the Foundation's allegations lacked merit. *Id.* at 1. On the same date, according to the Foundation, it issued a second notice to the Attorney General concerning its allegations. *Id.* at 33 ¶ 2 and 35 ¶ 12. On February 8, 2017, the PDC unanimously recommended to the Attorney General that it take no further action on the Foundation's complaint. *Id.* at 11-12. Pursuant to that recommendation, the Attorney General did not initiate an enforcement action against SEIU 775 as to

these allegations, nor did any county prosecutor initiate an enforcement action against SEIU 775. *Id.* at 35 ¶15.

According to the Foundation, on September 8, 2017, it submitted a letter and notice to the public officials alleging that SEIU 775 was a political committee, and therefore, violated the FCPA by not filing a statement of organization and submitting a disclosure report for the month of June 2016. *Id.* at 33 ¶ 2 and 35 ¶ 11. According to the Foundation, it submitted a second notice concerning this allegation on October 26, 2017. *Id.* at 33 ¶ 2 and 35 ¶ 12. Again, neither the Attorney General nor any county prosecutor initiated an enforcement action against SEIU 775 in response to that latest allegation. *Id.* at 35 ¶ 15.

Then, on January 19, 2018, the Foundation filed a complaint against SEIU 775 in Thurston County Superior Court, alleging FCPA violations based on both sets of claims outlined above. *Id.* at 13.¹ The complaint was filed 352 days after the Foundation purported to send its second notice to the public officials concerning its December 16, 2016 allegations. The complaint was also filed 86 days after the Foundation purported to send its second notice to the same officials concerning its September 8, 2017 allegations.

¹ The Foundation filed an Amended Complaint on April 6, 2018. *Id.* at 33.

On August 28, 2018, SEIU 775 filed a Motion to Dismiss the Foundation’s claims, in part on the ground that the claims were procedurally barred by the FCPA’s citizen suit provision, then codified at RCW 42.17A.765. *Id.* at 53. A hearing on the motion was held on November 9, 2018, at the end of which the trial court denied SEIU 775’s motion. *Id.* at 114. SEIU 775 subsequently filed a Motion to Certify the procedural bar issue for discretionary review, which the trial court denied on December 7, 2018. *Id.* at 144. SEIU 775 filed a timely Notice of Discretionary Review on December 10, 2018. *Id.* at 147.

V. ARGUMENT

A. Standard for Discretionary Review

RAP 2.3 provides that “any act of the superior court not appealable as a matter of right” may be reviewed by discretionary review. RAP 2.3(a). Discretionary review may be accepted where:

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

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

RAP 2.3(b). Both of the foregoing criteria warrant review here.²

² SEIU 775 also notes that, notwithstanding the lack of a certification by the trial court or a stipulation between the parties, the Court may *sua sponte* grant review of this issue to

B. Summary of Argument

This case turns on the proper construction of the citizen suit provisions contained in *former* RCW 42.17A.765.³ The Court of Appeals' first task is to decide whether to enforce the statute's plain language. The language at issue states that a prospective citizen plaintiff must give certain officials notice that he or she "will commence a citizen's action *within ten days* upon their failure to do so." *Former* RCW 42.17A.765(4)(a)(iv) (emphasis added). Because this language is clear on its face, the statute plainly attaches the ten-day limit to the citizen's prospective action, not to any enforcement action of the officials. Therefore, no reading can be accepted which shuffles the phrase "within ten days" to the end of the clause, as the Foundation requests.

This case then requires the Court to consider a simple question: what result follows when a statute requires a party to give notice that it will file suit "within ten days" upon the occurrence of a condition precedent? May the party, upon the condition coming to pass, simply ignore its own promise and file suit more than ten days later? Or is the party precluded from filing suit once it reneges on its promise? In what

the extent it finds it involves a controlling question of law as to which there is a substantial ground for a difference of opinion. *See Ohnemus v. State*, 195 Wn. App. 135, 137, n.1, 379 P.3d 142, (2016) (granting discretionary review *sua sponte* on this basis, despite lack of trial court certification or party stipulation)(citing RAP 1.2(a)).

³ All cites to RCW 42.17A.765 in this section of the brief are to the statute as it existed on the date this action was filed, contained in App. at 153.

follows, SEIU 775 shows that the traditional canons of construction and common law waiver rules demonstrate that the second of these answers is correct. Because the trial court committed obvious or probable error on this issue, discretionary review should be granted.

C. The Trial Court Committed Obvious or Probable Error by Holding That the Foundation Was Not Required to File its Citizen Action Within Ten Days of the Attorney General and Prosecuting Attorney’s Failure to Initiate Their Own Enforcement Actions.

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

1. The Statute’s Plain Language Refers to a Citizen Complainant Filing Suit “Within Ten Days” of the Public Officials’ Failure to Act.

A fair reading of the words actually used in *former* RCW 42.17A.765(4)(a)⁴ shows that the FCPA unambiguously limits the time for a private citizen to file a citizen’s action to a ten-day window subsequent

⁴ Although not directly relevant to this argument, it is worth noting that the 10-day window within which a citizen suit may be brought was in no way altered by the recent amendments to the FCPA. *See* RCW 42.17A.775(3) (“To initiate the citizen’s action, after meeting the requirements under subsection (2) of this section, a person must notify the attorney general and the commission that he or she will commence a citizen’s action *within ten days* if the commission does not take action or, if applicable, the attorney general does not commence an action.”) (emphasis added).

to governmental inaction regarding the citizen's complaint.⁵ Subsection (i) demands that, as a condition to filing suit, the attorney general and county prosecutor first must have "failed to commence an action [] within forty-five days after" receiving an initial notice described in RCW 42.17A.765(4). RCW 42.17A.765(4)(a)(i). As a second condition, the person must, after sending the initial notice, have "further notified the attorney general and prosecuting attorney that the person will commence a citizen's action *within ten days* upon their failure to do so." RCW 42.17A.765(4)(a)(ii) (emphasis added). Finally, it must be the case that "[t]he attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice." RCW 42.17A.765(4)(a)(iii).

⁵ The relevant language states in full:

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

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

- (i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;
- (ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;
- (iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and
- (iv) The citizen's action is filed within two years after the date when the alleged violation occurred."

Former RCW 42.17A.765(4)(a)(i)-(iv).

Two things are clear on the face of subsection (ii): (1) that the complainant must warn that he will bring an action “within ten days,” *not* at any time thereafter in his discretion; and (2) that the 10-day period starts upon “their” – the public officials’ – “failure to do so,” i.e., to commence an FCPA action.

With respect to point (1), the 10-day limitation applies to the citizen, not the public officials, because it immediately follows the term “citizen’s action.” RCW 42.17.765(4)(a)(ii). Under the last antecedent rule, “courts construe the final qualifying words and phrases in a [clause] to refer to the last antecedent unless a contrary intent appears in the statute.” *Eyman v. Wyman*, 191 Wn.2d 581, 599, 424 P.3d 1183 (2018); *see also Flowers v. Carville*, 310 F.3d 1118, 1124 (9th Cir. 2002) (last antecedent rule forecloses interpretations that result in “words leaping across stretches of text, defying the laws of both gravity and grammar”). Here, “citizen’s action” is the last antecedent before “within ten days.” In order to apply “within ten days” to the public officials’ failure to file enforcement actions, as the Foundation has suggested, the Court would have to shuffle the phrase from its current position to the end of the sentence. It would then not even modify an earlier antecedent, but a subsequent phrase, which is grammatically impossible. A court is not permitted to edit a statute in that way. *See Kilian v. Atkinson*, 147 Wn.2d

16, 20, 50 P.3d 638 (2002) (further judicial construction is not permitted to an “unambiguous statute even if [the court] believes the Legislature intended something else but did not adequately express it”); *In re Estate of Black*, 153 Wn.2d 152, 162, 102 P.3d 796 (2004) (a “court must interpret the present language of the statute and not ‘rewrite explicit and unequivocal statutes’”) (quoting *State v. Mollich*, 132 Wn.2d 80, 87-88, 936 P.2d 408 (1997)).

With respect to point (2), the state officers’ “failure” to commence an enforcement action is measured by the expiration of a ten-day window and triggers a symmetrical 10-day period for the citizen to sue the alleged violator. Subsection (i) refers to the public officials’ “fail[ure] to commence an action hereunder....” RCW 42.17A.765(4)(a)(i). Thus, “failure to do so” in subsection (ii) alludes to the public officials’ “failure” to bring an enforcement proceeding introduced in subsection (i). Subsection (iii) discusses that “failure” yet again, and provides the public officials ten days from their receipt of the citizen’s second notice to bring an enforcement action. RCW 42.17A.765(4)(a)(iii). Accordingly, the officials’ “failure” does not mean refraining from *ever* suing an alleged violator, but refraining specifically within ten days of receiving the citizen’s second notice. Subsection (ii)’s limitation on the time to file a citizen suit “upon th[is] failure” thus means that the citizen must sue

within ten days following the expiration of the officials' own ten-day period to act.⁶

Although no court has been asked to directly construe the language in question, the only authority to even discuss the requirements of RCW 42.17A.765(4)(a) supports this reading. *See State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n ("EFF")*, 111 Wn. App. 586, 49 P.3d 894 (2002). Recapitulating the provision's requirements in *dictum*, the Court in *EFF* stated in relevant part that "the person must file a second notice with the AG and prosecuting attorney notifying them that the person will *commence a citizen's action within 10 days of this second notice* if neither the prosecutor nor the AG acts." *Id.* at 604 (emphasis added). *EFF* thus announced unequivocally that the time to file a citizen suit is temporally limited by the date of the second notice.

Significantly, campaign finance law in at least one other state operates similarly to the FCPA in this regard. In Colorado, a citizen plaintiff must submit a written complaint to the secretary of state, who will in turn refer it to an administrative law judge. CO Const. Art. 28, §

⁶ Alternatively, the use of the word "upon" could imply that the citizen's window to sue is simultaneous with, not successive to, the officials' opportunity to file suit, such that whichever party files first precludes the other from suing. This has been the approach taken by the Court of Appeals in the past. *See infra*. In either case, what is not ambiguous is the existence of a 10-day window for a citizen to sue an alleged violator and the window's attachment to the officials' decisions to refrain from suing, be it following – or coincident with – the officials' 10-day opportunity to do so. Under either interpretation, the instant lawsuit was untimely filed.

9(2)(a). If the secretary declines to enforce the judge's decision, the citizen may bring a private cause of action "within thirty days of the decision." *Id.* In addition to this post-administrative exhaustion deadline, a citizen must also bring a private action "within one year of the date of the violation...." *Id.* Notably, Colorado courts enforce the plain language of these dual requirements, even where, without any dilatory conduct by the citizen, its application may foreclose a private action. *See Campaign Integrity Watchdog, LLC v. Alliance for a Safe & Indep. Woodmen Hills*, --- P.3d -- --, 2017 WL 710493, at *3-5, *cert. granted in part*, 2017 WL 4873289 (2017) (consistent with plain meaning, interpreting "violation" to refer to violator's conduct, not to judge's decision, although administrative process may take longer than one year, thereby exceeding limitations period). A number of federal statutes also require potential plaintiffs to file suit within a certain number of days following the conclusion of an administrative investigation, notwithstanding the existence of a separate statutory limitations period. *See, e.g.*, 42 U.S.C. § 2000e-5(f)(1) (requiring ADA or Title VII plaintiff to bring suit within ninety days of EEOC's termination of investigation); 29 U.S.C. § 626(e) (requiring same for an ADEA plaintiff).

The parties do not dispute that the Foundation did not file its citizen action within ten days of the public officials declining to pursue

either set of its allegations. As discussed above, the Foundation filed its suit 352 days after it claims it issued its second notice concerning the December 14, 2016 allegations, and thus, under SEIU 775's construction of the statute, 332 days late. Likewise, the complaint was filed 86 days after the Foundation claims to have issued its second notice concerning the September 8, 2016 allegations, and thus 66 days late under SEIU's reading. For these reasons, the trial court's failure to hold the Foundation's citizen action time-barred was obvious or probable error.

2. A Citizen Waives Its Right to File a Citizen Action When It Reneges on Its Notice's Promise to File Suit Within Ten Days.

In its oral ruling, the trial court did not reject SEIU 775's argument that the plain language of RCW 42.17A.765(4)(a)(ii) provides that the "action" to be filed "within ten days" of the public officers' failure to act is that of the citizen, not the officers. The Court ruled only that subsection (ii) imposes a notice requirement, such that while a citizen may be required to *notify* the public officers that he or she will file suit within 10 days of their failure to do so, the citizen is not actually required to consummate the warning as described, should the officials fail to act. *See* App. at 120-21 at 54:17-55:3.⁷ Implicit in this reasoning is the view that a

⁷ Specifically, the trial court stated: "The court interprets the provision of the statute specifically referring to the citizen having an obligation thereafter to further notify the attorney general and the prosecuting attorney that the person will commence an action within ten days upon failure to do so...as a notice statute, notice to the attorney general

plaintiff may flout the terms of its own statutorily-required notice and face no adverse consequences. That is wrong for two reasons.

First, it would render the notice requirement meaningless. It is a standard rule of statutory interpretation that courts must construe statutes “so as to avoid rendering meaningless any word or provision.” *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). But under the trial court’s reading, the same result obtains regardless of whether the citizen’s second notice states that he will file suit within ten days of the officials’ failure to act or merely that he will file suit at some indefinite point thereafter. In either case, the citizen is permitted to ignore the required notice terms and file suit at his leisure. It is therefore not only probable, but obvious, that permitting a citizen to file suit at any point after the failure of the public officials to act renders the phrase “within ten days” mere surplusage.

Second, as a matter of common law principle, a citizen is bound to comply with his own pronouncement of when he will file suit. Decisions in a variety of contexts illustrate the rule that whenever a statute or policy imposes a notice requirement, the issuer thereof has a duty to act in accordance with the notice’s terms or else waives any rights that would otherwise follow. *See, e.g., Abbenante v. Giampietro*, 75 R.I. 349, 352, 66

and the prosecuting attorney. It does not result in an affirmative obligation or duty or requirement on the part of the person to take action within ten days of that notification.”

A.2d 501 (R.I. 1949) (affirming dismissal of trespass and ejectment action because landlord had statutory duty to give tenant notice to quit and then “act in accordance with [notice] and accept no rent thereafter from the tenant until” case decided or tenant paid new rate, whereas landlord instead accepted tenant’s payment at old rate as credit toward new rent); *accord Beverly Health & Rehab. Servs., Inc. v. N.L.R.B.*, 317 F.3d 316, 321 (D.C. Cir. 2003) (although union provided required ten-day notice of intent to strike, protections of the National Labor Relations Act were lost when strike did not begin until three days after that date); *Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1166 (D.C. 1985) (landlord’s notice of default did not extinguish tenant’s right to exercise purchase option because “acceptance of rent following notice of breach and failure to follow through on the terms of the notice constitute a waiver and permit the exercise of the revived purchase option”); *LaGuardia Assoc. v. Holiday Hospitality Franchising, Inc.*, 92 F. Supp. 2d 119, 130 (E.D.N.Y. 2000) (franchisor waived right to terminate franchise agreement when, after providing default notice and setting deadline to cure, it failed to act on notice for ten months).

Upholding this principle is all the more critical in the instant context, where the citizen complainant acts not in his private interest but “in the name of the state.” *See* RCW 42.17A.765(4). To permit a citizen to

renege on the terms of his notice would therefore be to permit the state to make false promises – an outcome that would call into question the credibility of the government.

In this case, the record does not disclose whether the Foundation’s second notice contained the requisite language. There are, however, only two possibilities: either the notice properly warned the public officials that the Foundation would file suit within ten days of their inaction, in which case the Foundation waived its right to sue by failing to follow through on this promise; or, alternatively, the notice did not even indicate that the Foundation would sue within ten days, in which case, even if the statute requires nothing more than disseminating certain notice language, the Foundation failed to do even that, and its claims are equally barred.

For these additional reasons, the trial court’s failure to hold the Foundation’s suit untimely constituted obvious or probable error.

D. The Trial Court’s Ruling Raises the Specter of a Useless Lawsuit.

The second prong of RAP 2.3(b)(1) is satisfied and discretionary review is warranted where it can save the court and the parties from engaging in “useless” litigation with “wide implications.” *Hartley v. State*, 103 Wn.2d 768, 773-74, 698 P.2d 77 (1985) (citing *Glass v. Stahl*

Specialty Co., 97 Wn.2d 880, 652 P.2d 948 (1982)). Those criteria are satisfied here.

Denial of discretionary review would permit the Foundation to proceed with its claims and will lead to protracted discovery and useless litigation concerning SEIU 775's political committee status. *See* App. at 121 at 55:6-9 ("The court also rules that the issue of whether SEIU [775] is a political committee is a determination for the factfinder."). Indeed, if forced to litigate whether SEIU 775 qualifies as a political committee, the Foundation would likely seek significant and broad discovery on this point. In that scenario, SEIU 775 would be deeply prejudiced by the need to expend time and money to address these factual issues, when the entire case may ultimately be resolved on the Foundation's failure to fulfill a threshold requirement. Washington courts have accepted review pursuant to RAP 2.3(b)(1) under similar circumstances. *See Douchette v. Bethel Sch. Distr. No. 403*, 117 Wn.2d 805, 808-09, 818 P.2d 1362 (1991) (affirming court of appeals' grant of discretionary review and merits determination, which reversed trial court's denial of defendant's motion to dismiss wrongful termination and age discrimination claims because statute of limitations had not been equitably tolled and plaintiff's suit was therefore procedurally barred).

As in *Douchette*, if the Court adopts SEIU 775’s construction of RCW 42.17A.765(4)(a), all of the Foundation’s claims would fail as a matter of law, because it is undisputed that the Foundation did not file suit within ten days’ of the public officials’ failure to act on any of its claims. It would therefore be unnecessary to examine the supposedly fact-intensive questions of whether SEIU 775 has a primary purpose of engaging in electoral political activity or whether it expects to receive contributions within the meaning of the FCPA.⁸ Nor would the trial court need to address the novel legal questions – raised by the complaint and the parties’ briefs but not reached in the trial court’s November 9, 2018 order – of whether labor unions lack a primary purpose to engage in political activity as a matter of law or whether an entity’s political committee status may be evaluated on a month-to-month basis. *See* App. at 48-50.

E. The Trial Court Ruling Substantially Limits the Freedom to Act of the Persons Who Are the Subjects of FCPA Citizen Notices.

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). However,

⁸ SEIU 775 does not concede that determining its primary purpose is a fact-intensive inquiry. It maintains, as argued elsewhere in its motion to dismiss below, that as a *bona fide* labor union, it inherently lacks a primary purpose to support or oppose candidates for political office or ballot initiatives. Nonetheless, the Foundation is likely to seek extensive and burdensome discovery on this issue, the propriety of which may necessitate additional motion practice.

the Court of Appeals has suggested that 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.” *Id.* at 207 (citing Geoffrey Crooks, *Discretionary Review of Trial Court Decisions under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541 (1986)). In a recent decision, the Court of Appeals granted discretionary review under RAP 2.3(b)(2) where it found that a trial court’s order denying a labor union’s motion to dismiss the contract and tort claims of its former legal counsel “substantially limit[ed] [its] freedom to act.” *Karstetter v. King County Corr. Guild*, 1 Wn. App. 2d 822, 825, 407 P.3d 384 (2017), *rev. granted*, 190 Wn.3d 1018, 418 P.3d 792 (2018). This criterion is likewise satisfied here.

Unless the Court of Appeals accepts review, any person or entity that is the subject of a citizen’s FCPA notices, including SEIU 775, will have the prospect of a citizen suit hanging over its head for a potentially extended period of time, perhaps as long as two years.⁹ In the interim, these persons will exist in a state of legal limbo, unsure of whether their past conduct will incur liability or whether their present and future

⁹ As noted above, both the current and former versions of the FCPA’s citizen suit provision require a citizen plaintiff to commence any action within two years of when the alleged violation occurred. *See* RCW 42.17A.775(4); *former* RCW 42.17A.765(4)(a)(iv). As is demonstrated by analogous state and federal statutory regimes, *see* Section C, *supra*, that substantive bar works in tandem with, not against, the procedural bar providing a window to act after administrative exhaustion.

conduct of a similar nature will lead to additional citizen complaints. Naturally, such uncertainty will lead many such persons to limit or altogether cease participating in electoral activities, thereby chilling an important First Amendment right.

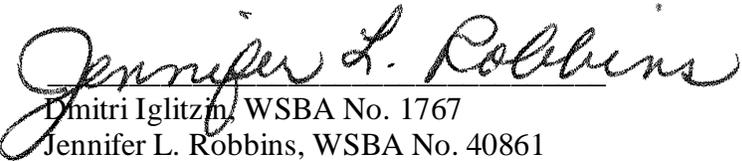
The unfairness of this limbo is all the more acute because it begins with a decision by the attorney general and county prosecutor to *not* pursue an enforcement action, a decision which is – as is the case here – often accompanied by the PDC and attorney general’s written opinions finding and explaining why the citizen’s complaint lacks merit. *See App.* at 1-12. While the FCPA certainly contemplates that the citizen may challenge the public officials’ findings by filing a separate lawsuit, it does not contemplate allowing a citizen to sit on its administratively-rejected claims for up to two years. Yet this is precisely what the trial court’s order accomplishes.

The Court should therefore accept discretionary review in order to eliminate the “limbo” period that creates uncertainty and chills First Amendment rights of SEIU 775 and other similarly-situated persons.

VI. CONCLUSION

For the foregoing reasons, SEIU 775 respectfully requests that this Court grant its Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

By: 

Dmitri Iglitzin, WSBA No. 1767

Jennifer L. Robbins, WSBA No. 40861

Danielle Franco-Malone, WSBA No. 40979

Benjamin Berger, WSBA No. 52909

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Counsel for Petitioner/Defendant SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2019, I caused the foregoing 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:

James G. Abernathy
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Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com


Jennifer L. Robbins, WSBA No. 40861

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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

**PETITIONER SEIU 775's APPENDIX IN SUPPORT OF MOTION
FOR DISCRETIONARY REVIEW**

Dmitri Iglitzin, WSBA No. 17673
Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909

Attorneys for Petitioner SEIU 775

BARNARD IGLITZIN & LAVITT, LLP
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APPENDIX PAGE NUMBER	DESCRIPTION
1-10	Memorandum from PDC Compliance Officer Kurt Young to the Public Disclosure Commission Members, dated 2/1/2017
11-12	Letter from the Executive Director of the Public Disclosure Commission to Washington State Attorney General Robert Ferguson, dated 2/8/2017.
13-32	Plaintiff Freedom Foundation's Complaint filed 1/19/2018
33-52	Plaintiff Freedom Foundation's First Amended Complaint filed 4/6/2018
53-75	Defendant SEIU 775's Motion to Dismiss, filed 8/28/2018
76-101	Plaintiff Freedom Foundation's Response to Defendant SEIU 775's Motion to Dismiss, filed 10/29/2018
102-113	Defendant SEIU 775's Reply In Support of Motion to Dismiss, filed 11/05/2018
114-116	Order Denying Defendant SEIU 775's Motion to Dismiss, entered 11/9/2018
117-123	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
124-132	Defendant SEIU 775's Motion for Certification, filed 11/27/2018
133-143	Defendant SEIU 775's Reply In Support of Motion for Certification, filed 12/5/2018

144-146	Order denying Defendant SEIU 775's Motion for Certification, entered 12/7/2018
147-152	Defendant SEIU 775's Notice of Discretionary Review, filed 12/10/2018
153-154	Copy of RCW 42.17A.765 Effective 1/1/2012
155-188	Copy of SEIU 775 Constitution and Bylaws

RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

By: 

Dmitri Iglitzin, WSBA No. 1767

Jennifer L. Robbins, WSBA No. 40861

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2019, I caused the foregoing APPENDIX IN SUPPORT OF 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:

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Jennifer L. Robbins, WSBA No. 40861



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

Date: February 1, 2017
To: Public Disclosure Commission Members
From: Kurt Young, PDC Compliance Officer
Subject: 45-Day Citizen Action Complaint
Service Employee's International Union 775 (SEIU 775)
PDC Case 12270

I. Background, Complaint Allegations, Request for PDC Review and Statutes/Rules

The Service Employee's International Union 775 (SEIU 775) is a local labor organization that is affiliated with the Service Employees International Union. SEIU 775 is a Lobbyist Employer that has been registered with the PDC since 2004, and also has a political action committee.

On October 4, 2005, SEIU Local 775 Separate Segregated Fund filed a Committee Registration (C-1pc report), registering as a new political action committee, selecting the Full Reporting option and listing David Rolf as Treasurer.

On August 29, 2007, SEIU Healthcare 775NW Separate Segregated Fund filed an amended C-1pc report, listing Adam Glickman-Flora as the Campaign Manager and Suzanne Wall as Treasurer.

On February 8, 2012, Service Employees International Union Healthcare 775NW Quality Care Committee filed a C-1pc report

On December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) pursuant to RCW 42.17A.765(4) with the Washington State Attorney General, Clark County Prosecuting Attorney, Ferry County Prosecuting Attorney, Lewis County Prosecuting Attorney, Lincoln County Prosecuting Attorney, King County Prosecuting Attorney, and Thurston County Prosecuting Attorney. FF alleged that SEIU 775 have violated provisions of RCW 42.17A by failing to register and report as a political committee for their combined support of candidates and ballot propositions in Washington State during calendar year 2016.

Exhibit #1.

The Citizen Action Letter was received by the Washington State Attorney General's Office (AGO) on December 15, 2016, and the Complaint was referred to the PDC by the AGO for investigation on January 5, 2017.

RCW 42.17A.005(39) defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."

RCW 42.17A.205 require political committees to register with the PDC if they have the expectation of receiving contributions or making expenditures in support a statewide ballot proposition.

RCW 42.17A.235 states that **RCW 42.17A.240** require political committees, including bona fide political party committees, to timely and accurately file reports of contributions and expenditures, including the disclosure of contributions made to candidates for public office. Under the full reporting option, until five months before the general election, Summary Contribution and Expenditure Reports (C-4 reports) are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Monetary Contribution reports (C-3 reports) are required to be filed weekly beginning June 1st of an election year, on the Monday following the date of deposit, and monetary contributions must be deposited within five business days of receipt.

PDC Interpretation 07-02, *Primary Purpose Test Guidelines*, distills relevant case law and other legal guidance (AGO 1973 no. 14, *State v. Dan Evans Committee*, and *Evergreen Freedom Foundation v. Washington Education Association*) concerning the definition of "political committee" in RCW 42.17.020(39). As discussed in the Interpretation, a person is a political committee if that person becomes a "receiver of contributions" to support or oppose candidates or ballot propositions, or if expenditures to support or oppose candidates or ballot propositions become one of the person's primary purposes.

II. Complaint

The 45-day letter alleges that the SEIU 775 as a labor organization, engaged in political activities, and those activities indicate that a primary purpose of the union is to influence elections. Therefore, the union needs to report all activities as a political committee and not just contribution and expenditure activities undertaken by a political committee.

As part of the complaint filed with the PDC, FF provided 65 exhibits containing thousands of pages of documents (Note: none of the exhibits are attached to staff's Investigative Review), that included the following:

- Multiple copies and amendments of US Department of Labor Forms LM-2 filed by SEIU 775 for calendar years 2010, 2011, 2012, 2013, 2014 and 2015.
- Copies of C-4 report and amended C-4 reports filed by SEIU 775 PAC for calendar years 2012-2016.

- A multi-page printout from the Working Washington website.
- An amended copy of IRS Form 990 for calendar year 2012.
- A copy of an SEIU 775 Membership Application.
- A printout from the SEIU 775 website entitled "About Us."
- A copy of SEIU 775 Constitution and By-laws.
- An SEIU 775 "Notice to Represented Members."
- A copy of SEIU 775 "Join Today" communication sent to non-members.
- A copy of an SEIU 775 email sent to members.
- Copies of SEIU 775 2012 and 2016 candidate endorsements.
- A copy of a 2016 SEIU 775 Candidate Guide.
- A copy of 2016 Initiative recommendations.
- A copy of a 2016 post-election email communication sent to members.
- A copy of a 2012 Jay Inslee C-3 report.
- Copies of 2016 I-1501: Campaign to Prevent Fraud and Protect Seniors C-3 reports.
- A copy of a 2016 Seattle Times article concerning SEIU and their participation in the 2016 election cycle.
- 720 pages of C-3 reports filed by candidates and political committees dating back to CY 2010, disclosing contributions that had been received from SEIU 775.
- 263 pages of C-4 reports
- Multiple copies of C-3 reports filed by candidates disclosing contributions received from SEIU 775.

III. Staff Investigative Review and Analysis

A. Records and Database Information

PDC staff reviewed the following documents:

- December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) against SEIU 775, and the multiple attachments included as part of the Complaint.
- SEIU 775 monetary and in-kind contributions, and expenditures listed in the PDC contribution and expenditure database.
- C-3, C-4 and Independent Expenditure reports (C-6 reports) filed by SEIU 775 PAC, Monthly Lobbyist Expense reports (L-2 reports) filed by SEIU 775 registered lobbyists, and Annual Lobbyist Employers reports (L-3 reports) filed by SEIU 775.
- PDC staff Executive Summary and Analysis of PDC Case 15-70 concerning a similar Complaint filed against SEIU 775 by the FF. **(Exhibit #2)**
- January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775 that was sent to Linda Dalton, Senior Assistant Attorney General and forwarded to PDC staff. **(Exhibit #3)**

B. PDC Staff Investigative Review Findings and Analysis

The scope of PDC staff's review of SEIU 775 activities is limited by the Citizen Action letter to potential alleged violations that occurred within two years from the date the Complaint was filed. PDC staff reviewed activities undertaken by SEIU 775, as a local union, and the SEIU 775 Quality Care PAC for calendar year 2016.

Summary of PDC Interpretation #07-02 "Primary Purpose Test Guidelines"

On May 2, 2007, the Commission adopted PDC Interpretation #07-02, which is based on a formal Attorney General's Opinion (AGO) and two court cases that were decided after Initiative 276 was approved by voters in 1972. The interpretation describes a "primary purpose" test or analysis that is used to assist in determining when an entity may become a political committee and be required to register and report in accordance with the disclosure requirements. See Exhibit #3.

Specifically, the interpretation referenced the trial court's decision in *Evergreen Freedom Foundation v. Washington Education Association* which adopted a standard for determining "one of the primary purposes" of an entity, and applied it by stating:

An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.

The interpretation discussed two possible prongs or scenarios under which an entity (person) may become a political committee. The two prongs include: (1) Having the expectation to receive or receiving contributions that are used to support or oppose candidates or ballot propositions; or (2) Having the expectation of making expenditures to further the electoral political goals of an organization.

When the evidence indicates that one of an organization's primary purposes is electoral political activity during a specific period of time, the organization may be a political committee and be required to comply with the appropriate disclosure requirements.

Staff Review Findings

Mr. Igliztin stated in the response that the most recent complaint filed by the FF against SEIU 775 was "very similar, if not identical" to the allegations that were filed by FF against SEIU 775 on July 22, 2015. He went on to state that "Those allegations were carefully investigated by the Washington State Public Disclosure Commission ("PDC") in PDC Case No. 15-070, which issued an Executive Summary and Staff Analysis on or about September 22, 2015, which found the charges lacking in merit. On September 24, 2015, the Washington State Attorney General's Office then reached the same conclusion, effectively adopting both the analysis and the conclusions of the Commission."

Mr. Iglitzin stated that SEIU 775 was not a political committee required to register with PDC under the "contributions" prong because there is no evidence that it had "the expectation of receiving contributions" in support of, or opposition to, any candidate or ballot proposition.

Concerning FF's new allegations, Mr. Iglitzin provided the following:

- The first charge provides no evidence that the funds SEIU 775 received from SEIU International (SEIU) were either solicited or used for the purpose of supporting or opposing any candidate or ballot proposition. SEIU 775's LM- 2 report (see Exhibit's A and B) disclosed that a sum of money was provided to SEIU 775 by SEIU for "political advocacy," and showed that SEIU 775 received money from SEIU, but provided no evidence that the money was intended to be used for electoral political activity.
- The second argument makes "the same error or misunderstanding that flawed" FF's 2015 Complaint against SEIU 775 since the allegations fails to understand that the provision by SEIU 775 of providing staff time to other entities and then being reimbursed for such staff time is not a contribution. Mr. Iglitzin further stated that expenditures made to SEIU 775 by a political committee are a reimbursement and not a contribution, such as the example provided concerning Working Washington. The funds were not provided by SEIU 775 for the purpose of supporting or opposing a candidate or ballot proposition, but were paid for staff services provided by SEIU 775 to Working Washington.
- He noted that FF uses the same logic concerning the allegation that the funds paid, which were actually reimbursements made to SEIU 775 by SEIU 775 Quality Care PAC, were "to purchase staff time from SEIU 775 (Complaint Exhibits C, J, and K) and were not a contribution being made to SEIU 775 for electoral political purposes."
- The third argument, that "SEIU 775's activities during the two-year period covered by the Complaint were 'designed to raise money for SEIU COPE render SEIU 775' as a political committee under the 'contributions' prong of the primary purpose test for a political committee" is detailed below.

SEIU 775 as a Receiver of Contributions Prong

The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and is a receiver of contributions. The complaint based that fact on an SEIU 775 Membership Application in which the union asks individuals who are not currently SEIU 775 members to become full union members. Once a member has joined the union and authorized their employer to withhold a designated monthly amount from their pay as dues, a portion of those dues monies are withheld as a contribution and forwarded to SEIU COPE, a federal political committee in Washington DC.

Based on the membership application, SEIU 775's role in these transactions is to ask non-members to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, SEIU 775 was not a receiver of contributions under RCW 42.17A.

Nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.

Mr. Iglitzin stated that this allegation was previously investigated and rejected by the PDC in PDC Case 15-070, as noted by PDC staff in the Executive Summary and Staff Analysis. In addition, PDC staff noted additional factors that were discussed in the PDC Case 15-070, which were used to determine if SEIU 775 was a political committee as detailed below.

Primary Purpose Test Prong

The complaint also alleged that SEIU 775 is a political committee because one of its primary purposes is to support or oppose candidates or ballot propositions. To address this allegation, PDC staff reviewed evidence relevant to the analysis recommended by the *EFF v. WEA* court. SEIU 775's stated mission is to "unite the strength of all working people and their families, to improve their lives and lead the way to a more just and humane world." Its stated goals, as noted in the prior Complaint (PDC Case 15-070) included the following:

- 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.

SEIU 775 has eight stated strategies to assist the union in achieving its goals which include: (1) Build worker leadership and activism; (2) Help workers form unions and other powerful organizations; (3) Hold politicians accountable; (4) Bargain strong contracts and provide quality services and benefits; (5) Advance pro-worker policy through influencing government, industry, and public opinion; (6) Build strategic partnerships; (7) Govern the Union democratically and use our resources responsibly; and (8) Adapt, innovate, and create.

Staff's assessment is that only two of the strategies, #3 and #5 may include an aspect involving electoral political activities. No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goal, and there was no evidence provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad non-political terms.

Staff did not find any financial evidence showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during calendar year 2016.

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

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

Mr. Iglitzin noted in his response that the AG's Office reviewed SEIU 775's expenditures prior to CY 2016, which included a portion of CY 2015, and concluded in September of 2015 that "[t]he records and the analysis do not support a conclusion that one of the primary purposes of SEIU 775 is campaign activities." He stated that the AG's Office previously reviewed SEIU 775's expenditures and "found, properly, that such expenditures do not convert SEIU 775 into a political committee, this letter need focus only on SEIU 775's 2016 expenditures, which similarly do not have that result."

Mr. Iglitzin provided the 2016 expenditures for SEIU 775, which included both cash and in-kind contributions made during the year. He stated that all of the contributions were properly reported by SEIU 775 on the Monthly Lobbyist Expense Reports (L-2 reports) filed by Adam Glickman, and included the following:

- \$1,585,000 contributed to the Campaign to Prevent Fraud and Protect Seniors.
- \$208,236.40 contributed to Raise Up Washington.
- \$58,763 contributed to the SEIU 775 Quality Care Committee
- \$2,500 contributed to Washington Won't Discriminate.
- \$151,249.70 contributed to Yes on I-125

Mr. Iglitzin stated that SEIU 775 has not completed its annual financial statements for CY 2016 that are to be submitted to the Internal Revenue Service (IRS). He stated that it was not possible to conduct a detailed analysis of the actual total expenditures for "electoral political activity" during CY 2016 and SEIU 775's 2016 total expenditures. He went on to state the following:

[W]e have determined that SEIU 775's total expenditures in 2016 will exceed its 2015 expenditures. The IRS Form 990 filed by SEIU 775 for calendar year 2015 reveals that SEIU 775 spent a total of \$25,259,216 in that year. Using that sum as the absolute minimum level of SEIU 775 expenditures in 2016, the amount of money spent by SEIU 775 on electoral political activity in 2016 will be less than 8% of its entire budget."

While this is a slightly higher percentage that was the case in prior years, it remains true, as the PDC found in its 2015 Executive Summary and Staff Analysis ... this amount is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court.

Looking at the expenditures made by SEIU 775 on electoral political activity during the two-year period covered by the Letter, for example - i.e., combining the amount spent in 2016 with the \$79,000 the PDC determined SEIU 775 spent in 2015 (see 2015 Executive Summary and Staff Analysis, page 5, third paragraph), and assuming the

same number for overall annual expenditures, \$25,259,216, for each of the two years covered - one can determine that during the relevant time period, SEIU 775 spent slightly less than 4% of its budget on electoral political activity - again, dramatically less than a majority of its expenditure activity.

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during either of the two years' subject to the Citizen Action Notice.

Finally, as part of PDC staff's 2015 Executive Summary and Analysis, Mr. Iglitzin stated the following:

2015 SEIU 775 is required to produce audited financial reports detailing its "chargeable" and "nonchargeable" expenditures to show how the union calculates its agency fee that must be paid by nonmembers in lieu of paying full membership dues. Chargeable expenses are for activities supporting its collective bargaining work, while non-chargeable expenditures are those expenditures that do not relate to negotiating and administering a collective agreement and in adjusting grievances and disputes. The agency fee for workers who are not full union members is equal to the full union dues multiplied by the percentage of chargeable expenditures to total expenditures."

PDC Staff Review of SEIU 775 Quality Care PAC & SEIU 775 Activities

Staff reviewed the PDC contribution and expenditure database, Monetary Contributions reports (C-3 reports), Summary Contribution and Expenditure reports (C-4 reports) filed by SEIU 775 Quality Care PAC, and Independent Expenditure/Electioneering Communications (C-6 reports) for the political activities undertaken during calendar years 2016.

Staff's review found the following:

I-1501: Campaign to Prevent Fraud and Protect Seniors: The PDC reports filed by the Pro-I 1501 Committee disclosed that SEIU 775 contributed a total of \$1,593,527 in support of the initiative which included \$1,535,000 in monetary contributions and \$58,527 for in-kind contributions for signature gathering (\$50,000), staff services, phone banking and postage.

I-1433: Raise Up Washington: The PDC reports filed by the Pro I-1433 Committee disclosed that SEIU 775 contributed a total of \$207,927 in support of the initiative which included \$173,000 in monetary contributions and \$34,927 for in-kind contributions for staff services, phone banking and postage.

I-1515: Washington Won't Discriminate: The PDC reports filed by the Anti I-1433 Committee disclosed that SEIU 775 contributed \$2,500 in monetary contributions to oppose the initiative.

I-125: Yes on I-125 Committee: (A 2016 City of Seattle ballot measure concerning Protecting Workers Rights) The PDC reports filed by the Pro I-125 Committee disclosed that SEIU 775 contributed a total of \$167,100 in support of the initiative which included \$120,000 in monetary contributions and \$47,100 for in-kind contributions for opinion research, and legal and staff services.

Contributions to SEIU 775 Quality Care Committee: The PDC reports filed by SEIU's 775 PAC disclosed that SEIU 775 contributed a total of \$58,912 which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions for staff and overhead services.

SEIU 775 Quality Care PAC

The C-3 and C-4 reports filed by the PAC disclosed that the committee received \$816,665 in monetary contributions received and made \$737,318 in expenditures during CY 2016.

The monetary contributions received included \$674,321 in total contributions from the SEIU Political Education and Action Fund out of Washington DC, and the \$58,912 list above which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions. The \$737,318 in committee expenditures in CY 2016 included contributions to political committees, candidates, and independent expenditures, that included the following:

- A \$200,000 in monetary contributions made to the Truman Fund (a caucus related political committee).
- A \$150,000 in monetary contributions made to the Kennedy Fund (another caucus related political committee).
- A \$50,000 monetary contribution made to the Washington State Democratic Central Committee.
- A \$50,000 monetary contribution made to New Directions PAC, an independent expenditures political committee.

IV. Conclusion

A review of the PDC database showed that SEIU 775 made campaign contributions during calendar year 2016 totaling \$2,029,966. While SEIU 775 has not completed IRS Form 990 for 2016, Form 990 filed by SEIU 775 for calendar year 2015 indicated that SEIU 775 spent a total of \$25,259,216.

Using 2015 annual expenditures of \$25,259,216 as a benchmark, the \$2,029,966 in political expenditures made during calendar year 2016 represented 8.03% of total projected expenditures.

This is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court.

SEIU 775 acknowledged that it made expenditures during the period covered by the complaint to its PAC, and in support of or opposition to ballot propositions, but denied that the primary, or one of the primary, purposes of SEIU 775 is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that SEIU 775 is a political committee subject to the Public Disclosure Act's disclosure requirements.

1. Based on the factors identified in staff's investigation and described above, staff has determined that SEIU 775 does not appear to be a political committee with a requirement to register and report with the PDC. SEIU 775 did not violate RCW 42.17A.205, .235, and .240 because: (1) It is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions; and (2) Supporting candidates or ballot propositions is not one of its primary purposes.

Investigative Review Exhibits

- Exhibit #1** December 15, 2016, 45-day Citizen Action Letter (Complaint) filed by The Freedom Foundation against SEIU 775. (Note – excluding thousands of pages of exhibits)
- Exhibit #2** PDC staff Executive Summary and Analysis of PDC Case 15-70, a 2015 Complaint filed against SEIU 775 by the Freedom Foundation.
- Exhibit #3** January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775.



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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February 8, 2017

The Honorable Robert Ferguson
Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

RE: Public Disclosure Commission Recommendation Following Staff Investigation Review of Service Employees International Union Local 775, PDC Case 13283

Dear Attorney General Ferguson:

This letter concerns the matter that your office referred to the Public Disclosure Commission for review and possible investigation on January 5, 2017 in response to a 45-day Citizen Action Complaint (Complaint) filed with the Attorney General on December 15, 2016. The Complaint alleged that Respondent, Service Employees International Union Local 775 (SEIU 775), violated RCW 42.17A because it has an expectation of receiving contributions and making expenditures in support of, or in opposition to, candidates or ballot propositions. The complaint alleged that as a political committee, SEIU 775 has failed to register and report with the PDC. (RCW 42.17A.205, .235, and .240)

PDC staff reviewed the Complaint and conducted an investigate review of the allegations made against SEIU 775 in the Citizen Action Letter and prepared an Investigative Review Memorandum with Recommendations and Exhibits. Note – the Investigative Review Memorandum inadvertently listed the PDC Case as 12270, when it should have been listed as 13283.

The Commission considered the results of staff's investigative review at a special Commission meeting held on February 8, 2017, where PDC staff presented its findings which included a recommendation regarding the allegations listed in the Complaint. A copy of the Investigative Review Memorandum with Exhibits is enclosed with this letter.

Staff Conclusion

As noted in the attached Investigative Review Memorandum with Exhibits, staff concluded that:

Based on the factors identified in staff's investigative review of the allegations listed in the Complaint, staff has determined that SEIU 775 does not appear to be a political committee with a requirement to register and report with the PDC.

The Honorable Bob Ferguson
Service Employees International Union Local 775
PDC Case 13283
Page 2

SEIU 775 did not violate RCW 42.17A.205, .235, and .240 because: (1) It is not a “receiver of contributions” in support of, or in opposition to candidates or ballot propositions; and (2) Supporting candidates or ballot propositions is not one of its primary purposes.

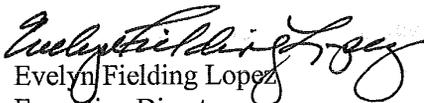
Finally, SEIU 775 has a political committee SEIU Healthcare 775NW Quality Care Committee, which has been registered and reporting with the PDC dating back to 2005.

Commission Recommendation

The Commission voted unanimously to accept staff’s recommendation, and to recommend that no further action be taken on the Citizen Action Complaint filed against Service Employees International Union Local 775.

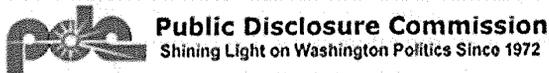
If you have questions, please contact me at (360) 664-2735. Thank you.

Sincerely,


Evelyn Fielding Lopez
Executive Director

Enclosure

cc: Commissioners
Linda A. Dalton, Sr. Assistant Attorney General
David Dewhirst and James Abernathy, Counsel, Freedom Foundation
Dmitri Iglitzin, Counsel, SEIU Local 775



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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input type="checkbox"/> Hearing is set Date: Time: Judge/Calendar:
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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

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

Plaintiff,

v.

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

Defendants.

No.

**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.

COMPLAINT
No.

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

COMPLAINT
NO.

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
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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
18 do political work for candidates and member political education as a part of their
19 job with [SEIU 775].

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

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

COMPLAINT
NO.

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.

24

COMPLAINT
No.

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.

24
COMPLAINT
No.

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.

24
COMPLAINT
NO.

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

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

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

e. any other penalty the Court deems appropriate under RCW 42.17A.750, et seq.,
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 19th day of January, 2018.

By: *Eric R. Stahlfeld*
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P.O. Box 552, Olympia, WA 98507
PH: 360.956.3482 | F: 360.352.1874
[EStahlfeld@freedomfoundation.com](mailto:ESTahlfeld@freedomfoundation.com)
Counsel for Freedom Foundation

By: *James G. Abernathy*
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

21 COMPLAINT
22 No.

Thurston CIVIL COUNTY SUPERIOR COURT
Case Information Cover Sheet (CICS)

Case Number _____ Case Title Freedom Foundation v. SEIU 77 et al
 Attorney Name James Abernathy Bar Membership Number 48801
 Alternate Email Address: knelsen@freedomfoundation.com
 (New Case Number will be Sent to this Email Address)

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

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| <input type="checkbox"/> ABJ Abstract of Judgment | <input type="checkbox"/> PRG Property Damage – Gangs |
| <input type="checkbox"/> ALR Administrative Law Review | <input type="checkbox"/> PRP Property Damages |
| <input type="checkbox"/> ALRJT Administrative Law Review-Jury Trial (L&I) | <input type="checkbox"/> QTI Quiet Title |
| <input type="checkbox"/> CRP Petition for Certificate of Restoration of Opportunity | <input type="checkbox"/> RDR Relief from Duty to Register |
| <input type="checkbox"/> CHN Non-Confidential Change of Name | <input type="checkbox"/> RFR Restoration of Firearm Rights |
| <input type="checkbox"/> COL Collection | <input type="checkbox"/> SDR School District-Required Action Plan |
| <input type="checkbox"/> CON Condemnation | <input type="checkbox"/> SPC Seizure of Property-Commission of Crime |
| <input type="checkbox"/> COM Commercial | <input type="checkbox"/> SPR Seizure of Property-Resulting from Crime |
| <input type="checkbox"/> DOL Appeal Licensing Revocation | <input type="checkbox"/> STK Stalking Petition |
| <input type="checkbox"/> DVP Domestic Violence | <input type="checkbox"/> SXP Sexual Assault Protection |
| <input type="checkbox"/> EOM Emancipation of Minor | <input type="checkbox"/> TAX Employment Security Tax Warrant |
| <input type="checkbox"/> FJU Foreign Judgment | <input type="checkbox"/> TAX L & I Tax Warrant |
| <input type="checkbox"/> FOR Foreclosure | <input type="checkbox"/> TAX Licensing Tax Warrant |
| <input type="checkbox"/> FPO Foreign Protection Order | <input type="checkbox"/> TAX Revenue Tax Warrant |
| <input type="checkbox"/> HAR Unlawful Harassment | <input type="checkbox"/> TMV Tort – Motor Vehicle |
| <input type="checkbox"/> INJ Injunction | <input type="checkbox"/> TRJ Transcript of Judgment |
| <input type="checkbox"/> INT Interpleader | <input type="checkbox"/> TTO Tort – Other |
| <input type="checkbox"/> LCA Lower Court Appeal – Civil | <input type="checkbox"/> TXF Tax Foreclosure |
| <input type="checkbox"/> LCI Lower Court Appeal – Infractions | <input type="checkbox"/> UND Unlawful Detainer – Commercial |
| <input type="checkbox"/> LUPA Land Use Petition Act | <input type="checkbox"/> UND Unlawful Detainer – Residential |
| <input type="checkbox"/> MAL Other Malpractice | <input type="checkbox"/> VAP Vulnerable Adult Protection Order |
| <input type="checkbox"/> MED Medical Malpractice | <input type="checkbox"/> VVT Victims of Motor Vehicle Theft-Civil Action |
| <input type="checkbox"/> MHA Malicious Harassment | <input type="checkbox"/> WDE Wrongful Death |
| <input checked="" type="checkbox"/> MSC2 Miscellaneous – Civil | <input type="checkbox"/> WHC Writ of Habeas Corpus |
| <input type="checkbox"/> MST2 Minor Settlement – Civil (No Guardianship) | <input type="checkbox"/> WMW Miscellaneous Writs |
| <input type="checkbox"/> PCC Petition for Civil Commitment (Sexual Predator) | <input type="checkbox"/> WRM Writ of Mandamus |
| <input type="checkbox"/> PFA Property Fairness Act | <input type="checkbox"/> WRR Writ of Restitution |
| <input type="checkbox"/> PIN Personal Injury | <input type="checkbox"/> WRV Writ of Review |
| <input type="checkbox"/> PRA Public Records Act | <input type="checkbox"/> XRP Extreme Risk Protection Order |

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.

APPEAL/REVIEW
<p>Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.</p> <p>Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).</p> <p>Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.</p> <p>Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.</p>
CONTRACT/COMMERCIAL
<p>Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.</p> <p>Commercial Contract-Complaint involving monetary dispute where a contract is involved.</p> <p>Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.</p> <p>Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.</p>
PROTECTION ORDER
<p>Civil Harassment-Petition for protection from civil harassment.</p> <p>Domestic Violence -Petition for protection from domestic violence.</p> <p>Extreme Risk Protection Order-Petition to restrict ownership, possession, custody or control of a firearm or concealed weapons permit.</p> <p>Foreign Protection Orders-Any protection order of a court of the United States, or of any state, territory, or tribal land, which is entitled to full faith and credit in this state.</p> <p>Sexual Assault Protection-Petition under RCW 7.90.020.</p> <p>Stalking- Petition for protection from stalking for victims who do not qualify for a domestic violence protection order. (RCW 7.92.030)</p> <p>Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.</p>
JUDGMENT
<p>Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.</p> <p>Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.</p> <p>Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.</p> <p>Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.</p> <p>Tax Warrants -A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed. (Four types available.)</p> <p>Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.</p>
OTHER COMPLAINT/PETITION
<p>Petition for Certificate of Restoration of Opportunity-Created under Second Engrossed Substitute House Bill 1553</p> <p>Change of Name-Petition for a change of name. If change is confidential due to domestic violence/anti-harassment see case type 5 instead.</p> <p>Deposit of Surplus Funds-Deposit of money or other item with the court.</p> <p>Emancipation of Minor-Petition by a minor for a declaration of emancipation.</p> <p>Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.</p> <p>Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).</p> <p>Malicious Harassment-Suit involving damages resulting from malicious harassment.</p> <p>Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).</p> <p>Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.</p> <p>Property Damage-Gangs-Complaint involving damage to property</p>

<p>related to gang activity.</p> <p>Public Records Act-Actions filed under RCW 42.56.</p> <p>Relief from Duty to Register-Civil action requesting relief from duty to register as a sex offender. Petition can address the registration obligation that arises from multiple cases. RCW 9A.44.142, 9A.44.143.</p> <p>Restoration of Firearms Rights-Petition seeking restoration of firearms rights under RCW 9.41.040 and 9.41.047. (Eff. 9-2-2014)</p> <p>School District-Required Action Plan-Petition filed requesting court selection of a required action plan proposal relating to school academic performance.</p> <p>Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.</p> <p>Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).</p> <p>Subpoenas-Petition for a subpoena.</p>
PROPERTY RIGHTS
<p>Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.</p> <p>Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.</p> <p>Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).</p> <p>Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.</p> <p>Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.</p> <p>Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.</p>
TORT, MEDICAL MALPRACTICE
<p>Hospital-Complaint involving injury or death resulting from a hospital.</p> <p>Medical Doctor-Complaint involving injury or death resulting from a medical doctor.</p> <p>Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.</p>
TORT, MOTOR VEHICLE
<p>Death-Complaint involving death resulting from an incident involving a motor vehicle.</p> <p>Non-Death Injuries -Complaint involving non-death injuries resulting from an incident involving a motor vehicle.</p> <p>Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.</p>
TORT, NON-MOTOR VEHICLE
<p>Asbestos-Complaint alleging injury resulting from asbestos exposure.</p> <p>Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.</p> <p>Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.</p> <p>Products Liability-Complaint involving injury resulting from a commercial product.</p> <p>Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.</p> <p>Victims of Motor Vehicle Theft-Complaint filed by a victim of car theft to recover damages. (RCW 9A.56.078)</p> <p>Wrongful Death-Complaint involving death resulting from other than professional medical treatment.</p>
WRIT
<p>Writ of Habeas Corpus-Petition for a writ to bring a party before the court.</p> <p>Writ of Mandamus-Petition for writ commanding performance of a particular act or duty.</p> <p>Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.</p> <p>Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.</p> <p>Miscellaneous Writs</p>

Updated: 2/03/2017

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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input type="checkbox"/> Hearing is set Date: Time: Judge/Calendar:
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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

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

Plaintiff,

v.

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

Defendants.

No. 18-2-00454-34

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.

24

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.
24

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
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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 [initiatives](http://kuow.org/post/here-are-real-winners-and-one-loser-years-ballot-initiatives) (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.

1 2016.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **VI. REQUESTED RELIEF**

8 WHEREFORE, Plaintiff requests the following forms of relief:

- 9 1. For such remedies as the Court deems appropriate under RCW 42.17A.750, including:
- 10 a. a judgment against Defendants in the amount of a \$10,000 (ten thousand dollar)
 - 11 penalty pursuant to RCW 42.17A.750(1) for each violation of chapter 42.17A
 - 12 RCW, in favor of and payable to the State of Washington, in an amount to be
 - 13 determined through discovery and/or at trial;
 - 14 b. a judgment against Defendants in the amount of a \$10 (ten dollar) penalty pursuant
 - 15 to RCW 42.17A.750(1)(d) for each day defendant failed to file a properly
 - 16 completed statement or report, in favor of and payable to the State of Washington,
 - 17 in an amount to be determined through discovery and/or at trial;
 - 18 c. a judgment against Defendants in the amount of a civil penalty equivalent to the
 - 19 amount SEIU failed to report as required, pursuant to RCW 42.17A.750(f); and
 - 20 d. a finding that Defendants' violations were intentional and trebling the amount of
 - 21 judgment, which for this purpose shall include costs, as authorized by RCW
 - 22 42.71A.765(5);
 - 23 e. any other penalty the Court deems appropriate under RCW 42.17A.750, et seq.,
 - 24

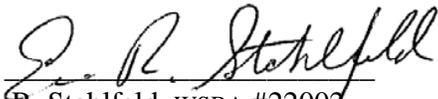
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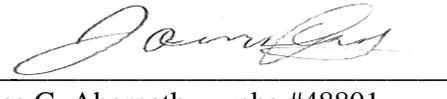
RCW 42.17A, or other law.

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

//////////

Dated this 6th day of April, 2018.

By: 
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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
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Attorneys for Defendants

Dated: April 6, 2018

By: 
Kirsten Nelsen

1 EXPEDITE
2 No Hearing Set
3 Hearing is set
4 Date: October 5, 2018
5 Time: 9:00 a.m.
6 Judge/Calendar: Dixon

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 SERVICE EMPLOYEES INTERNATIONAL
15 UNION 775, a labor organization

16 Defendant.

No. 18-2-00454-34

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

17 **RELIEF REQUESTED**

18 Plaintiff Freedom Foundation ("Foundation"), after having allegedly given the notice
19 required by statute, and after having had its claims against Defendant SEIU 775 ("SEIU 775")
20 squarely and repeatedly rejected on their merits by both the Washington State Public Disclosure
21 Commission ("the PDC") and the Office of the Attorney General ("the Attorney General"), has
22 now brought suit under the Fair Campaign Practices Act, RCW 42.17A ("FCPA"), in the name
23 of the state, alleging that SEIU 775 has unlawfully failed to register and report as a political
24 committee. *See* Claims I through IV, Amended Complaint pp. 14-18. For the reasons that
25 follow, SEIU 775 submits this Motion To Dismiss pursuant to Civil Rules ("CR") 12(b)(1) and
26 12(b)(6).

MOTION TO DISMISS - 1
CASE NO. 18-2-00454-34

LAW OFFICES OF
SCHWERIN CAMPBELL
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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.
18
19

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”
23
24
25

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

19
20 For motions brought under CR 12(b)(6), dismissal is appropriate if it appears beyond a
21 reasonable doubt that the plaintiff could prove no set of facts consistent with the complaint that
22 would entitle him to the relief requested. *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692
23 P.2d 793 (1984). In such context, the Court must accept the plaintiff's factual allegations as true.
24

25
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
21

22 _____
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. Mollichi*, 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
24

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.

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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
21

22
23
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.

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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
23

24
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).

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

20 Subsequent to *State v. Evans*, in *WEA*, the Court of Appeals explained how this test
21 applies to labor unions. In that case, the Court noted that “if electoral political activity is merely
22 one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral
23 political activity cannot be said to be one of the organization’s primary purposes.” *WEA*, 111
24 Wn. App. at 600. Applying that test to the case before it, the Court noted that the Washington
25 Education Association, like any other labor union, had the purpose of “enhanc[ing] the economic
26

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:

- 22 • Lift caregivers out of poverty.
- 23 • Build worker organizations that are powerful, sustainable, and scalable.
- 24 • Transform health and long-term care to ensure quality and access for all.
- 25 • Increase prosperity and reduce inequality for working people.

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:

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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
conducting contract negotiations and strikes, but also by legislative lobbying and
electoral political activity when its members' economic security is implicated.

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

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

15
16 It is true that, as stated in *WEA*, an organization's stated goals are not *in every case*
17 dispositive of the issue of whether electoral political activity is actually one of its primary
18 political purposes. An organization could conceivably "merely restate[] its primary political
19 purpose in broad nonpolitical terms." *WEA*, 111 Wn. App. at 600. However, the Foundation's
20 Amended Complaint is devoid of any factual allegation that this limited exception applies to
21

22
23 ¹⁰ The Court in *WEA* also discussed a "nonexclusive list of analytical tools a court may use when evaluating the
24 evidence," which included: "(1) the content of the stated goals and mission of the organization; (2) whether the
25 organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the
26 organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the
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

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

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

11
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.
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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
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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.
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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
16 **CONCLUSION**

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

19 DATED this 28th day of August, 2018.

20
21 
22 SCHWERIN CAMPBELL BARNARD

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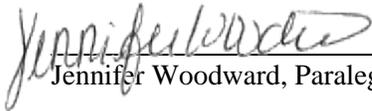
Attorneys for SEIU 775

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
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E-mail: jabernathy@myfreedomfoundation.com
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Signed in Seattle, Washington, this 28th day of August, 2018.


Jennifer Woodward, Paralegal

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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: <u>November 9, 2018</u> Time: 9:00AM Judge/Calendar: Dixon
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IN THE SUPERIOR COURT 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, et al.,

Defendants.

NO. 18-2-00454-34

**PLAINTIFF’S RESPONSE TO
DEFENDANT SEIU 775’S MOTION TO
DISMISS**

PLAINTIFF’S RESPONSE TO
SEIU 775’S MOTION TO DISMISS
No. 18-2-00454-34

FREEDOM
FOUNDATION 

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1 **RELIEF REQUESTED**

2 This Court should deny Service Employees International Union 775’s (“SEIU”) Motion to
3 Dismiss, whether considered under Civil Rule 12(b)(6) or 12(b)(1).¹

4 **STANDARD OF REVIEW**

5 “[A] plaintiff states a claim upon which relief can be granted if it is *possible* that facts could
6 be established to support the allegations in the complaint.” *McCurry v. Chevy Chase Bank FSB*,
7 169 Wn.2d 96, 101, 233 P.3d 861 (2010) (emphasis in original). Dismissal under motions to
8 dismiss is a drastic remedy that should be employed sparingly. *Gildon v. Simon Prop. Group Inc.*,
9 158 Wn.2d 483, 494, 145 P.3d 1196 (2006). Dismissal under CR 12(b)(6) is appropriate only
10 where the plaintiff cannot prove any set of facts “consistent with the complaint” entitling the
11 plaintiff to relief. *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995). Even a
12 conceivable hypothetical situation consistent with the complaint defeats a CR 12(b)(6) motion. *Id.*
13 at 756. When ruling on a CR 12(b)(6) motion, all facts alleged in the plaintiff’s complaint are
14 presumed true; the Court considers only the allegations contained in the complaint and may not go
15 beyond the face of the pleadings. *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725, n. 42, 189
16 P.3d 168, 176 (2008). Further, a special rule of construction applies in this case because RCW
17 42.17A.001(11) states that the Fair Campaign Practices Act (“FCPA”):

18 ...shall be liberally construed to promote complete disclosure of all information
19 respecting the financing of political campaigns and lobbying...

20 **ARGUMENT**

21 A “political committee” is “any person... having the expectation of receiving contributions
22 or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”
23 RCW 42.17A.005(37). Plaintiff may show SEIU is a continuing political committee in two ways.

24 ¹ Plaintiff filed its First Amended Complaint on April 6, 2018.

1 Plaintiff may do so under RCW 42.17A.005(37)'s "contributions prong." *State ex rel. Evergreen*
2 *Freedom Foundation v. Washington Educ. Ass'n, et al.*, 111 Wn. App. 586, 598, 49 P.3d 894
3 (2002) ("*EFF I*").² Plaintiff may also do so under § 005(37)'s "expenditures prong." *Id.* Plaintiff
4 also alleges SEIU constituted a political committee in June 2016. *Id.* at ¶¶ 135-151.

5 As a political committee, SEIU failed to file the proper reports with the Public Disclosure
6 Commission and violated RCW 42.17A.205 (by failing to file a statement of organization) and
7 RCW 42.17A.235 (by failing to report its contributions and expenditures). First Amended
8 Complaint ("Am. Compl." or "Amended Complaint"), ¶¶ 112-134. Plaintiff pled facts in its
9 Amended Complaint that, if true, entitle Plaintiff to relief. Further, facts "consistent with the
10 complaint" can be established to support the allegation in the Amended Complaint that SEIU is a
11 political committee. This Court should deny SEIU's Motion to Dismiss.

12 **I. NEITHER FORMER RCW 42.17A.765 OR CURRENT RCW 42.17A.775³ REQUIRED**
13 **PLAINTIFF TO FILE THIS ACTION WITHIN TEN DAYS OF THE AG'S AND PROSECUTING**
ATTORNEYS' FAILURE TO ACT.

14 Former RCW 42.17A.765(4)(a)(ii) establishes the content requirements of a notification
15 and does not restrict when a citizen action may be filed (as SEIU argues at SEIU Br., 6-10). The
16 plain language of the text requires this conclusion, and accordingly, courts have never applied this
17 provision to restrict the filing of a citizen action, nor has a court articulated a ten day limitation on
18 such actions. Finally, the legislative history indicates that the provision is a notice requirement
19 rather than a durational restriction.⁴

22 ² SEIU does not seek to dismiss Plaintiff's claim that SEIU is a political committee under the contributions prong.

23 ³ Given this Court's previous rejection of Defendant's argument that amended RCW 42.17A.775 applies, former RCW
24 42.17A.765 is the relevant statutory language applicable here. Regardless, current § 775 contains essentially the same
language as former § 765. *See* SEIU Br., Appx. B.

⁴ SEIU cites no case in which a court construes the statute as SEIU does, and noticeably absent from SEIU's brief is
any legislative history on the matter.

1 **A. The unambiguous language of RCW 42.17A.765 does not bar Plaintiff’s action.**

2 The meaning of a statute clear on its face must be “derived from the language of the statute
3 alone.” *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). An unambiguous statute is “not
4 subject to judicial construction...” *Id.* Courts cannot “add language to an unambiguous statute...”
5 *Id.* Courts must also “construe statutes assuming that the legislature meant exactly what it said.”
6 *Umpqua Bank v. Shasta Apartments, LLC*, 194 Wn. App. 685, 694, 378 P.3d 585 (2016). Former
7 RCW 42.17A.765(4)(a)(ii) provides in part, that, in addition to a prior notice required by §
8 765(4)(a)(i), a person seeking to file a citizen action must “notif[y] the Attorney General and
9 prosecuting attorney that the person will commence a citizen’s action within ten days upon their
10 failure to do so...” *See* SEIU Br., Appx. B.

11 “Notify” is not defined in the statute, but a word “which has a well-accepted, ordinary
12 meaning, is not ambiguous. *Wash. State Coalition for the Homeless v. Wash. Dep’t of Social and*
13 *Health Services*, 133 Wn.2d 894, 906, 949 P.2d 1291 (1997). The Merriam-Webster Dictionary
14 defines “notify” as “to give notice of or report on the occurrence of.”⁵ Section 765(4)(a)(ii)
15 therefore **only** imposes a notification requirement along with requirements on the contents of the
16 notification. SEIU admits this clear meaning of the provision. SEIU Br., 7, n. 5.

17 Section 765 creates a citizen action and defines its scope and requirements. The Legislature
18 specifically listed each individual requirement separately. *See* former RCW 42.17A.765(4)(a)(i)-
19 (iv), SEIU Br., Appx. B. The Legislature **did** impose a statute of limitations when it required the
20 “citizen’s action [to be] filed within two years after the date when the alleged violation occurred.”
21 RCW 42.17A.765(4)(a)(iv). Clearly absent, however, is a provision requiring a complainant to file
22 an action within ten days of the expiration of the second ten day notice provided to the Attorney
23

24 ⁵ Available at <https://www.merriam-webster.com/dictionary/notify> (last visited October 29, 2018).

1 General and prosecuting attorney. The Legislature could have easily included such a limitation if
2 it so intended. The Legislature “understands how to enact” limits on legal actions. *Wingert v.*
3 *Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 860, 50 P.3d 256 (2002). Had the Legislature intended
4 to impose such a limitation, it “would have included” the necessary language. *Id.*

5 *State ex rel. Evergreen Freedom Foundation v. Washington Education Ass’n (“EFF 1”)*
6 confirms this interpretation. 111 Wn. App. 586, 604, 49 P.3d 894 (2002). There, the Division 2
7 Court of Appeals stated a citizen action may be brought “if **three** conditions are met.” *Id.*
8 (emphasis added). The court noted the statutory language (1) requires a person to “give notice to
9 the [AG] and the [PA] that there is reason to believe” a violation has occurred; (2) if, after 45 days,
10 the AG and PA have not commenced an action, the person “must file a second notice with the AG
11 and [PA] notifying them that the person will commence a citizen’s action within 10 days of the
12 second notice if neither the [PA] nor the AG acts”; and, (3) the AG and [PA] must fail to bring an
13 action within 10 days of receiving the second notice.” *Id.* The court in *EFF 1* did not impose a ten
14 day limit on the filing of a citizen action; nor did the court describe such a window when
15 summarizing the requirements. **Nor has any court ever done so.** This is because, as the Court in
16 *EFF 2* later acknowledged, the purpose of the section is to give the AG a timeframe during which
17 it can prevent a citizen’s complaint by filing its own. *State ex rel. Evergreen Freedom Found. v.*
18 *Nat’l Educ. Ass’n*, 119 Wn. App. 445, 453, 81 P.3d 911, 916 (2003) (“the statute’s clear intent [is]
19 that the AG or county prosecutor’s “commencement of an action” within the proscribed time period
20 precludes a citizen’s action.”).

21 SEIU cites no case imposing a ten-day window on the filing of citizen actions, and SEIU
22 cites no legislative history which supports its position. SEIU claims Plaintiff must “eliminate, alter,
23 or move” language to support its interpretation. SEIU Br., 8. But nothing could be further from the
24

1 truth. No language in former § 765 (or current § 775) imposes a ten day restriction on a person
2 filing a citizen action. On the contrary, it is SEIU which must alter the provision’s language to
3 conclude it imposes a separate substantive limitation on filing.

4 The only language in the provision which imposes a restriction on when a “citizen’s action
5 is filed” is the limitations period in § 765(4)(1)(iv) which requires the action be “filed within two
6 years after the date when the alleged violation occurred.” The “repose” SEIU speculates the
7 Legislature might have intended for possible defendants is addressed by this provision. It is
8 common that potential defendants have lawsuits, or even criminal indictments, “looming over
9 [their] heads” for periods of time which greatly exceed ten days. For example, limitation periods
10 for breaches of a written contract are six years, RCW 4.16.040, and some criminal charges can be
11 brought at any time. There is nothing unusual about the Legislature’s decision to include a
12 limitations period of two years. RCW 4.16.020 (libel, slander, assault, false imprisonment). It is
13 perfectly consistent with other limitation periods and makes sense in light of the two year
14 frequency of elections and their accompanying campaigns. *See also infra* 9-15 (legislative history
15 discussion on policy behind the two year limitation).

16 Moreover, unlike here, SEIU’s examples of timing restrictions on citizen actions in other
17 contexts are clearly articulated in statute. *See* 42 U.S.C. § 2000e-5(f)(1) (“...within ninety days
18 after the giving of such notice a civil action may be brought against the respondent...by any person
19 whom the charge alleges was aggrieved...”); 29 U.S.C. § 626(e) (“A civil action may be brought
20 under this section by a person...against the respondent named in the charge within 90 days after
21 the date of the receipt of such notice.”). Section 765 does not contain anything establishing a
22 limitation so clearly.

1 **B. Alternatively, legislative history supports Plaintiff’s interpretation and courts**
2 **have resolved any ambiguity in Plaintiff’s favor.**

3 If, contrary to SEIU’s claim otherwise, SEIU Br., 6-9, § 765(4), the Court concludes that
4 the statute is ambiguous, then this Court need only review the legislative history and court
5 decisions interpreting it to conclude the Legislature clearly did not intend to impose a ten day
6 window for citizen actions. A statutory provision is ambiguous if it is susceptible “to more than
7 one reasonable interpretation” and any ambiguity can be resolved with reference to legislative
8 history. *Tesoro Refining and Marketing Co. v. State Dep’t of Revenue*, 164 Wn.2d 310, 317-18,
9 190 P.3d 28 (2008). Courts have already resolved any ambiguity in Plaintiff’s favor. The statute
10 clearly does not impose a stand-alone ten day limitation on filing. SEIU admits this. SEIU Br., 7,
11 n. 5. Rather, any ambiguity concerns whether the “ten days” mentioned in § 765(4)(a)(ii) relating
12 to the second notice is the same “ten days” mentioned in § 765(4)(a)(iii) which relates to the time
13 span a complainant must wait before he or she files a citizen action. Plaintiffs contend these
14 provisions describe the same ten-day period, i.e., the period of time a complainant must wait (to
15 allow the AG or prosecutor to file an action) before filing a citizen action—not separate periods
16 (one applicable to the AG and prosecutor and a subsequent ten day period applicable to
17 complainants).

18 The Division 2 Court of Appeals resolved this ambiguity in Plaintiff’s favor in *EFF I*.
19 There the Court of Appeals interpreted the “ten days” in subsection (4)(a)(ii) to be the same “ten
20 days” in subsection (4)(a)(iii). In *EFF I*, the court stated that “the person must file a second notice
21 with the AG and [PA] notifying them that the person will commence a citizen’s action within 10
22 days of the second notice if neither the [PA] nor the AG acts...” and that “the AG and the [PA]
23 must “in fact” fail to bring such an action within 10 days of receiving the second notice” before
24 the complainant can file a citizen action. 111 Wn. App at 604 (emphasis added). Multiple courts

1 cite this standard verbatim therefore resolving any ambiguity in Plaintiff’s favor. This
2 interpretation is reasonable given the words “in fact” present in subsection (4)(a)(iii). Both uses of
3 “ten days” therefore refer to the time the **AG and prosecutors** have to file an action before the
4 complainant may do so. SEIU may claim this interpretation is “absurd,” SEIU Br., 7, n. 5, but the
5 Division 2 Court of Appeals, and every other court, find it perfectly acceptable.

6 In fact, the opposite conclusion that *both* the AG and the citizen must file their complaints
7 within ten days is absurd. If SEIU is correct that the language refers to **different** ten day periods
8 (the first which applies to the AG and prosecutor and the second which subsequently applies to
9 complainants), *EFF 1* (and all courts) would thus be equating the **beginning point** at which a
10 complainant could first file a citizen action with the complainant’s **deadline** for filing a citizen
11 action , thereby rendering citizen actions impossible. It is clear courts have chosen to interpret §
12 765(4)’s actual language (“ten days”) in a way which avoids inventing new language clearly absent
13 from the provision, as courts cannot do. *See Atkinson*, 147 Wn.2d at 20.

14 SEIU’s interpretation requires this Court to invent new language not in the statute, but *EFF*
15 *I* (binding precedent), *see supra*, requires an interpretation which avoids inventing new language,
16 as do principles of statutory construction. SEIU’s interpretation also results in *EFF 1* conflating
17 the deadline to file a citizen action with the starting point at which time such an action could be
18 filed. This Court should decline to invent new language and apply binding precedent which
19 interprets the provision’s “ten-day” language as a singular time period. *EFF 1, supra*. However, if
20 this Court finds neither option appealing, it should consult the statute’s legislative history to
21 resolve any remaining ambiguity. *See Tesoro Refining*, 164 Wn.2d at 317-318 (ambiguity “allows
22 the court to employ tools of statutory construction such as legislative history to interpret the
23 statute”).

1 The language in the original 1972 ballot measure and the subsequent legislative history of
2 its amendments support the interpretation courts have given to the “ten-day” language in §
3 765(4)(a)(ii)-(iii) (described *supra*). The language of the original 1972 provision included “ten
4 day” language which clearly applied **only** to the AG:

5 Any person who has notified the attorney general in writing that there is reason to
6 believe that some provision of this act is being or has been violated may himself
7 bring in the name of the state any of the actions (hereinafter referred to as a citizen's
8 action) authorized under this act if the attorney general has failed to commence an
9 action hereunder within forty days after such notice and if the attorney general has
10 failed to commence an action *within ten days* after a notice in writing delivered to
11 the attorney general advising him that a citizen's action will be brought if the
12 attorney general does not bring an action.

13 *See* Voter Pamphlet, Sec. 40, p. 65 (emphasis added).⁶ The Supreme Court confirmed this
14 interpretation of the “ten day” language in *Fritz v. Gorton*, 83 Wn.2d 275, 314, 517 P.2d 911
15 (1974) (“the plaintiff in such cases is required to give the [AG] a 40-day notice of an alleged
16 violation. The litigant may then proceed only after the service of a second 10-day notice results in
17 no action on the part of the [AG].”) Under the original 1972 language, a six year statute of
18 limitations was the only timing restriction on the filing of citizens actions. *See* Voter Pamphlet,
19 Sec. 41, p. 65.

20 In 1975, the Legislature amended the citizen action process originally established by
21 Initiative 276 with HB 827, changing the forty day notice requirement to forty-five days and
22 maintaining the “ten-day” language regarding the second notice:

23 ...such person has [after forty-five days] further notified the attorney general and
24 prosecuting attorney that said person will commence a citizen's action *within ten*
days upon their failure so to do, and the attorney general and the prosecuting
attorney have *in fact* failed to bring such action *within ten days* of receipt of said
second notice.

⁶ Available at <http://washingtoncog.org/wp-content/uploads/2017/04/I-276-VotersPamphlet1972.pdf> (last visited October 26, 2018).

1 Laws of 1975, Chapter 294, Sec. 27 (p. 1320) (emphasis added).⁷ Nothing in the 1975
2 Amendments’ legislative history suggests, or even hints, the Legislature intended to drastically
3 limit the time in which a complainant could file a citizen action from up to approximately six years
4 after the required notices, to a meager ten days. In fact, the legislative history shows the amended
5 language (which SEIU admits survives today) only imposed **three** requirements on complainants,
6 none of which included a ten-day restriction on when a citizen action could be filed. *See infra*.

7 The 1975 debate over HB 827 centered on whether a plaintiff in a citizen action should be
8 entitled to half of any judgment awarded, plus attorneys’ fees, as provided in the original language.
9 Accordingly, the statute was regularly described as the “bounty hunter” law. Repealing it in its
10 entirety was considered, and the House even passed a version of HB 827 that repealed it. However,
11 the Senate passed a different version of a campaign finance law overhaul bill. In conference
12 committee, the citizen action language was reinserted, but modified. The new language established
13 that a person had to notify the AG *and* the relevant county prosecuting attorney before bringing
14 suit, the initial forty-day notice was extended to forty-five days, and the plaintiff could no longer
15 receive any part of a judgment issued in a citizen action (only attorneys’ fees).⁸

17 ⁷ Available at
18 <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1975ex1c294.pdf?cite=1975%201st%20ex.s.%20c%20294%20%2A7%2027>; (last visited October 26, 2018).

19 ⁸ *See* “Sectional analysis of Engrossed Second Substitute House Bill No. 827 as amended by the House,” prepared by
20 nonpartisan committee staff of the House Committee on Constitution and Elections, May 8, 1975, Abernathy Decl.,
21 Ex. A (p. 7) (“Section 26 - Repealed the authorization of a citizen to bring suit alleging a violation of this chapter.”);
22 “Summary of All Major and Some Minor Amendments to Second Substitute House Bill 827,” Washington State
23 House of Representatives, May 8, 1975, Abernathy Decl., Ex. B (“25. Deletes so called ‘bounty hunter’ clause which
24 allowed citizens to file suit if the Attorney General did not act on request.”); Washington State Senate Research Center,
“Analysis of the Proposed Amendments to Int. #276, May 30, 1975, Abernathy Decl., Ex. C

(“Present law: RCW 42.17.400 (enforcement): This section describes procedures relative to the enforcement of the act in the distribution of cases to the proper authorities. Provisions exist in subsection (4) for any person who has notified the attorney general in writing with regard to a complaint of violation of any provision of the act and in the event the attorney general has failed to commence action within 40 days of such notice, such person may bring citizens action and contingent upon judgment shall be entitled to be reimbursed for such cost and fees by the state. This has been noted as a ‘bounty hunter’ clause of Initiative 276 which was held constitutional in the recent supreme court decision [*Fritz v. Gorton*].”);

1 In addition to n. 9, other legislative history materials also support this interpretation. *See*
2 Abernathy Decl., Ex. D, “Summary of the changes made by the Senate in Engrossed Second
3 Substitute House Bill 827,” prepared by nonpartisan committee staff of the House Committee on
4 Constitution and Elections, June 5, 1975, “Change #39” (describing **three** requirements which do
5 not include a ten day limitations period on complainants); Abernathy Decl., Ex. E, “Summary of
6 Changes in ESSEB 827 Adopted by the Freed Conference Committee,” Washington State
7 Legislature, June 8, 1975, “Change #33” (describing same **three** requirements without a ten day
8 limitations period); Abernathy Decl., Ex. F “Summary of the differences between the 3rd draft of
9 the proposed conference committee report on Engrossed Second Substitute House Bill 827 and
10 Engrossed Second Substitute House Bill 827 as amended and passed by the House,” Washington
11 State Legislature (“Change #26 - On page 35, after line 23 deletes the section which would have
12 repealed the citizen's right to bring suit in cases where prosecutors fail to act. (See page 36, lines
13 12-30 of ESSHB 827.”). Importantly, it is also supported by legislative comments on the final
14 House Bill as enacted and enrolled. Abernathy Decl., Ex. G, “Sectional analysis of Engrossed
15 Second Substitute House Bill No. 827 as enacted and enrolled,” prepared by nonpartisan staff of
16 the House Committee on Constitution and Elections, July 2, 1975, “Section 27” (again describing
17 the provision’s **three** requirements without a ten-day limitations period).

18 Were it the Legislature’s intent to limit citizen actions to a ten day filing period, this would
19 have represented a serious departure from the law then in effect.⁹ The fact that nothing in the
20 legislative history suggests the Legislature meant to make such a change, that the Legislature saw
21 the amended 1975 language as imposing the same basic requirements on complainants as the
22

23 ⁹ All indications suggest that the change in the “ten day” language in the 1975 Amendments only imposed a
24 requirement that complainants alert the AG and prosecutor in their second notices that the AG and prosecutor now
have only ten more days to file an action which would preclude complainants from doing so.

1 original 1972 language, cited *supra*, and the fact that the contemporary understanding of the
2 legislation was that a citizen’s action could be filed if the authorities failed to file an action within
3 ten days of receiving the second notice confirms the invalidity of Defendant’s imaginative re-
4 interpretation of the law.

5 This is confirmed in the statute’s 2007 Amendments when the Legislature **for the first**
6 **time** included language which explicitly limited the time period in which complainants could file
7 a citizen action (to less than approximately six years). In 2007, the Legislature specifically added
8 a separate requirement imposed on complainants in a new subsection: “This citizen action may be
9 brought only if the citizen’s action is filed within two years after the date when the alleged violation
10 occurred.” RCW 42.17A.765(4)(a)(iv); *see also*, Laws of 2007, Chapter 455, Sec. 1 (p. 3) (HB
11 1832).¹⁰ This language clearly indicates the Legislature intended to impose a restriction on when
12 complainants could file citizen actions—language missing from subsection (4)(a)(ii), which only
13 imposes a notice requirement. Again, if in the 1975 Amendments the Legislature intended to
14 drastically alter the time period in which complainants could file a citizen action, it would have
15 included similar language in those 1975 Amendments—which it declined to do.

16 Unlike the 1975 legislative history, the legislative history of HB 1832 in 2007 indicates
17 that the altered language does, indeed, impose a restriction on how long complainants have to file
18 a citizen action. For example, in remarks before the Senate Government Operations and Elections
19 Committee (March 26, 2007), Representative Sam Hunt, prime sponsor of HB 1832, stated:

20 In essence, it [HB 1832] shortens citizen complaint periods for complaints against
21 campaigns for violations to two years. And, those of us who have been around
22 campaigns know that after two years — if you have an issue campaign, if you have
23 a losing campaign, even a winning campaign — the volunteer staff and folks
24 disperse to various places. This would provide a two-year window for anybody who
has a legal complaint against a campaign to present that complaint. It would not

¹⁰ Available at <http://lawfilesexternal.wa.gov/biennium/2007-08/Pdf/Bills/Session%20Laws/House/1832-S.SL.pdf?cite=2007%20c%20455%20C2%A7%201>; (last visited October 28, 2018).

1 impact agencies like the Public Disclosure Commission, which has a five-year
2 period; that would remain.¹¹

3 Similarly, Rep. Hunt also stated before the House State Government and Tribal Affairs Committee
4 (February 21, 2007) that,

5 What we are trying to do is—we talked with Public Disclosure Commission on this
6 and it appears that what we’re trying to do is draft it to the wrong part of the RCW.
7 We are not looking to interfere or to shorten the time that the PDC and—would
8 have to address complaints and issues. We’re more looking at the time for other
9 complaints. And part of the problem is, with a two or four-year election cycle—
10 once you get beyond that period its hard to—especially if you’re a losing
11 campaign—to find your records, you know, who was your treasurer? Where is your
12 treasurer? That sort of thing.¹²

13 Additionally, the HB 1832 Bill Analysis prepared by non-partisan legislative staff
14 summarized the bill as follows: “Decreases to two years the statute of limitations for actions
15 brought for violations under chapter 42.17 RCW.”¹³ The Final Bill Report maintains: “Any
16 citizen’s action brought under the state law governing campaign financing and related reporting
17 must be commenced within two years of the violation.”¹⁴ *See also* House Bill Report (“Any
18 citizen’s action brought under chapter 42.17 RCW must be commenced within two years of the
19 violation.”).¹⁵

20 In the 43 years since the Legislature amended the citizen action to include the language
21 which survives today, no legislator, court, or any person anywhere has interpreted the language of
22

23 ¹¹ Available at

24 <https://www.tvw.org/watch/?clientID=9375922947&eventID=2007031127&startStreamAt=1563&stopStreamAt=1630&autoStartStream=true> (last visited October 28, 2018).

¹² Available at

<https://www.tvw.org/watch/?clientID=9375922947&eventID=2007021147&startStreamAt=1806&stopStreamAt=2223&autoStartStream=true>

¹³ Available at <http://lawfilesexxt.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/House/1832.HBA%2007.pdf> (last visited October 28, 2019).

¹⁴ Available at <http://lawfilesexxt.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/House/1832-S.FBR.pdf> (last visited October 20, 2018).

¹⁵ Available at <http://lawfilesexxt.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/House/1832.HBR.pdf> (last visited October 28, 2018).

1 the citizen action provision as SEIU proposes here. The only meaning ever given to the citizen
2 action requirements by 43 years of legislative history and decades of court decisions is far from
3 “absurd.” SEIU Br., 7, n. 5. SEIU cites no court which adopted its novel interpretation and failed
4 to cite any legislative history. This Court should decline to be the first to re-interpret the citizen
5 action provision as SEIU proposes. Legislative history supports the only interpretation the relevant
6 provisions have had to date and, more importantly, binding precedent requires this Court to
7 interpret the “ten day” language in the relevant subsections to be an identical time period. *See*
8 *supra*. This Court should therefore deny SEIU’s Motion to Dismiss.

9 **II. IT IS POSSIBLE THAT FACTS COULD BE ESTABLISHED TO SUPPORT THE ALLEGATION**
10 **IN PLAINTIFF’S COMPLAINT THAT SEIU CONSTITUTES A POLITICAL COMMITTEE**
11 **UNDER THE EXPENDITURES PRONG OF RCW 42.17A.005(37).**

12 An organization that makes or expects to make expenditures to further electoral political
13 goals and does so as one of its “primary purposes…” constitutes a political committee under RCW
14 42.17A.005(37). *EFF I*, 111 Wn. App. at 598-99.¹⁶ The Amended Complaint alleges as much in
15 ¶¶ 120-124, 129, and also alleges facts sufficient to support these allegations. *See infra*. Additional
16 facts “consistent with the complaint” also support these allegations. *Bravo*, 125 Wn.2d at 750.

17 SEIU cites its own Constitution and Bylaws and concludes “[i]t is clear beyond any dispute,
18 based on these stated goals, that electoral political activity is not one of SEIU 775’s primary
19 purposes, but is instead just one of the means by which SEIU 775 seeks to achieve its ‘legitimate
20 broad nonpolitical goals.’” SEIU Br., 14. SEIU cites *EFF I* for the supposed principle that “...if
21 electoral political activity is merely one means the organization uses to achieve its legitimate broad
22 nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary
23 purposes.” *EFF I*, 111 Wn. App. at 600. But in doing so SEIU substitutes a factual application in

24 ¹⁶ SEIU does not dispute it expects to make and/or makes expenditures to further electoral political goals.

1 *EFF 1* for its rule. *EFF 1*'s quote is a legal principle applied to a factual *conclusion* made by a
2 factfinder, not a conclusion made by a court as a matter of law.

3 The applicable *rule* is that, to be considered a political committee, an organization must
4 make political expenditures and have as one of its primary purposes the goal of seeking to “affect,
5 directly or indirectly, governmental decision-making by supporting or opposing candidates or
6 ballot propositions.” *State v. Evans*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976). Determining if this
7 requirement is satisfied involves examining the organization’s stated goals and mission *to*
8 *ascertain* “whether electoral political activity was a primary means of achieving the stated goals
9 and mission during the period in question.” *EFF 1*, 111 Wn. App. at 599. The court then states that
10 “under *this* [immediately preceding] analysis,” a court is to employ a factors test, four of which
11 include (nonexclusively) (1) the content of the stated goals and mission of the organization; (2)
12 whether the organization’s actions further its stated goals and mission; (3) whether the stated goals
13 and mission of the organization would be substantially achieved by a favorable outcome in an
14 upcoming election; and (4) whether the organization uses means other than electoral political
15 activity to achieve its stated goals and mission.” *Id.* at 600.

16 Using this factor test, the factfinder must determine if an organization has “merely restated
17 its primary political purpose in broad nonpolitical terms...” *Id.* The court warns against making
18 the analysis a formula, as SEIU does here. *Id.* The court must “reach all relevant evidence,”
19 “examine[] the totality of the circumstances,” and look at all of the organization’s actions,
20 including actions “in addition to its stated goals.” *Id.* *EFF 1* continued, stating that “**after** making
21 these considerations, the **factfinder** determines... on the whole” whether the “evidence indicates
22 that one of the organization’s primary purposes was electoral political activity during the period
23 in question.” *Id.* The Amended Complaint offers ample allegations that a factfinder must consider
24

1 in determining if one of SEIU’s primary purposes was political activity. *See infra*. This is all
2 Washington’s liberal notice pleading standard requires.

3 Though SEIU claims political activity is not one of its primary purposes, *EFF 1* makes it
4 clear that the **factfinder** determines the primary purposes of an organization **as part of the normal**
5 **applicable test**, not the organization itself. The trial court in *EFF 1* did exactly this after a 16-day
6 trial and made a factual determination using the applicable test. But a factual conclusion in *EFF 1*
7 does not automatically apply to another organization in a different case. Each entity must be
8 independently examined to determine if “the evidence indicates that one of the organization’s
9 primary purposes was electoral political activity...” *Id.* at 600. Though the Amended Complaint
10 alleges sufficient facts, Plaintiff is also entitled to seek further evidence consistent with the
11 Amended Complaint—evidence *EFF 1* states is relevant for the analysis. *See also See Putman*,
12 166 Wn.2d at 983 (“Under notice pleading, plaintiffs use the discovery process to uncover the
13 evidence necessary to pursue their claims.”); *Bryant*, 119 Wn.2d at 222 (“The notice pleading rule
14 contemplates that discovery will provide parties with the opportunity to learn more detailed
15 information about the nature of a complaint.”); *LG Electronics Inc.*, 185 Wn. App. at n. 17 (“...if
16 the defendant’s motion to dismiss is to be decided based on evidence or lack thereof, full and
17 reasonable discovery must be afforded.”).

18 SEIU claims *EFF 1*’s factors test does not apply because Plaintiff’s Complaint is “devoid
19 of any factual allegation” that SEIU has “merely restate[d] its primary political purpose in broad
20 nonpolitical terms.” *SEIU Br.*, 15-16 (citing *EFF*, 111 Wn. App. at 600). First, the Amended
21 Complaint **does** allege the magic words SEIU claims are necessary; namely, that “SEIU has
22 restated its primary political purpose in broad nonpolitical terms.” *Am. Compl.*, ¶ 100. Second,
23 Plaintiff alleged many facts in its in its original Complaint which are also in the Amended
24

1 Complaint which support the idea that SEIU has restated its primary political purpose in broad
2 nonpolitical terms. Such evidence includes SEIU’s own words. Am Compl., ¶ 54 (“Because state,
3 federal, and local legislative activity affects the wages, benefits, and rights of all workers, and
4 because the long-term care industry specifically is funded in principal part by public dollars, the
5 outcome of elections for many public offices is very important to the Employer [SEIU 775].”).
6 The enthusiastic statements of SEIU executives at SEIU conventions and in letters and emails to
7 potential SEIU members and SEIU members¹⁷ also constitute evidence that its real goals and
8 missions are articulated at those conventions and in those letters and emails, rather than in its self-
9 serving Bylaws—especially considering SEIU’s actual political expenditures.

10 SEIU also tells people they should give it money because political advocacy is necessary
11 to accomplish its goal of “influencing government,” “hold[ing] politicians accountable,”
12 “[build[ing] a stronger and more effective labor movement,” and “build[ing] a political voice for
13 working people.” *Id.* at ¶¶ 72-73, 88. SEIU tells members and the public that it organizes house-
14 to-house canvassers to support ballot initiatives, *id.* at ¶ 35, works to change labor laws, *id.* at ¶
15 36, makes phone calls, knocks on tens of thousands of doors, and delivers votes for a pro-union
16 gubernatorial candidate, *id.* at ¶ 37, mobilizes people to political action using Twitter and
17 Facebook, *id.* at ¶ 38, participates actively in elections, *id.* at ¶ 54, endorses candidates for public
18 office, *id.* at ¶ 64, successfully elects candidates, *id.* at ¶ 65, indicates in its Bylaws that it intends
19 to receive political contributions by stating that a certain percentage of dues must be contributed
20 to political committees, *id.*, ¶¶ 67-68, supports and contributes to candidates for public office and

21 _____
22 ¹⁷ See e.g., Former SEIU President David Rolf informs SEIU members (and the public) at SEIU conventions of SEIU’s
23 political activities, Am. Compl., ¶¶ 35-37, 80, 90; SEIU informs SEIU members (and the public) of its political activity
24 on its Twitter and Facebook accounts, *id.* at ¶ 38; SEIU’s Constitution and Bylaws inform members of its intent to
engage in political activity, *id.* at ¶¶ 44-46, 50, 67-68, 72-74; SEIU provides its members with audits reporting its
political activities, *id.* at ¶¶ 75-78; SEIU’s website lists its political activities, *id.* at ¶¶ 64, 79; SEIU sends emails and
letters to its members outlining its political activities, *id.* at ¶¶ 63-66; and SEIU uses mass media to inform the public
and members of its political activities, *id.* at ¶ 81.

1 works to pass ballot measures, *id.* at ¶ 75, updates its political activities on its website, *id.* at ¶ 79,
2 brags about its political accomplishments in widely-circulated newspapers such as the Seattle
3 Times, *id.* at ¶ 81, and recruits people to become dues-paying members based on a stated need to
4 engage in political advocacy to accomplish its goals. *Id.* at ¶ 88. **SEIU has also stated that it**
5 **engages in political advocacy for the purpose of increasing its leverage in collective**
6 **bargaining negotiations.** *Id.* at ¶ 36 (if elected officials do not give SEIU what it wants at the
7 bargaining table, SEIU will get what it wants through initiatives, i.e. “we’ll [SEIU] just write the
8 union contract into the city law”).

9 SEIU then, in fact, spends the money given it by these people on political activities, i.e., it
10 does exactly what it told these people it would do with their money. *Id.* at ¶¶ 20-34, 49, 51-53. The
11 organization then audited itself, determined how much it spent on political activities, and then used
12 that audit to predict its future spending on political activities over the next year. *Id.* at ¶¶ 75-78.
13 This all constitutes evidence that SEIU restates its primary political purpose in broad nonpolitical
14 terms. SEIU also cites PDC investigation summaries, which Plaintiff will move to strike as
15 inadmissible at this stage, as concluding the same. SEIU Br., 16. Whatever investigation the PDC
16 conducted is irrelevant at this stage. The purpose of permitting citizen’s suits is that the PDC may
17 be wrong. *Utter*, 182 Wn.2d at 411. Plaintiff is entitled in discovery during a lawsuit to uncover
18 evidence which supports the factual allegations in the Complaint, as well as evidence supporting
19 relevant facts consistent with the Complaint.

20 Moreover, even SEIU’s stated strategies indicate political activity is one of its primary
21 purposes, supporting the argument that even SEIU’s **stated** goals and strategies display a political
22 purpose—an argument both complaint’s allegations also support. Of the eight strategies SEIU cites
23 it employs in Art. 1.6 of its Bylaws, *see also* Am. Compl. ¶ 46, the first five directly implicate
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1 political activity. SEIU Br., 14. For example, SEIU builds worker leadership and activism.
2 “Activism” is nearly always **political** activism and SEIU’s own statements cited above support the
3 idea that SEIU spends resources engaging itself and others in political activism, many of which
4 may constitute political activity under the FCPA. *See, e.g.*, Am. Compl., ¶¶ 35-38. SEIU also helps
5 workers form unions and “other powerful organizations.” SEIU Br., 13. SEIU’s own words, some
6 cited above, indicate that these are likely organizations engaging in political activity. “Hold[ing]
7 politicians accountable” is overtly political. *Id.* As for “bargain[ing] strong contracts,” SEIU has
8 overtly stated that it uses political activity for leverage in collective bargaining, i.e. negotiating
9 “strong contracts.” Am. Compl., ¶ 36. And “advance[ing] pro-worker policy through influencing
10 government” is also overly political. SEIU Br., 14. Even #6, “[b]uild strategic partnerships,” may
11 involve political activities such as partnering with political committees and candidates. Lastly,
12 strategies #7 and #8 are so vague, it is difficult to divine their meanings at all. Thus, at least five
13 of SEIU’s strategies, arguably six, directly implicate political activity. Facts alleged in the
14 complaints certainly support this and Plaintiff is entitled to discovery to find evidence supporting
15 its allegations.¹⁸

16 **III. IT IS POSSIBLE THAT FACTS COULD BE ESTABLISHED TO SUPPORT THE ALLEGATION**
17 **IN PLAINTIFF’S COMPLAINT THAT SEIU CONSTITUTED A POLITICAL COMMITTEE IN**
18 **JUNE 2016.**

19 *EFF I* pointedly states that a court cannot ignore any obfuscation in an organization’s
20 stated purposes if the organization puts a majority of its effort toward political activity. 111 Wn.
21 App. at 600. In June, 2016, SEIU did just that.

22 _____
23 ¹⁸ SEIU also states, “[T]here is no allegation that anything close to ‘a majority’ of SEIU 775 expenditures were spent
24 on such activity, which is ‘considered an important part of the balancing of factors’...” SEIU Br., 18. But *EFF I*
affirmed the trial court’s decision “exclusive of an analysis of percentage of expenditures.” *Id.* at 601. This harmonizes
with the court’s warning that the analysis is intended to reach all relevant evidence and should “not be applied as a
formula.” *See supra.*

1 SEIU contends, “the relevant period of inquiry for an entity’s primary purposes [is], at the
2 shortest, an election cycle.”¹⁹ SEIU Br., 19. But SEIU’s interpretation contradicts Washington
3 authority and is bad policy. First, *EFF 1* shows that a fact finder has discretion when determining
4 the duration of an election cycle “for the purpose of [a] case.” *EFF 1*, 111 Wn. App. at 604 (the
5 trial court in *EFF 1* served as the factfinder). Second, under SEIU’s interpretation no entity could
6 be considered a “political committee” on the basis of its expenditures in support of or opposition
7 to a **ballot measure** because the definition of “election cycle” applies exclusively to **candidate**
8 elections and makes no mention of ballot measures. The definition of “political committee,”
9 however, specifically includes persons engaged in supporting or opposing “any candidate **or any**
10 **ballot proposition**” (emphasis added). RCW 42.17A.005(37).

11 Third, the FCPA contemplates that political committees could exist for as short a time as
12 **three weeks or less**. RCW 42.17A.205 states that

13 [a] political committee organized within the last three weeks before an election and
14 having the expectation of receiving contributions or making expenditures during
15 and for that election campaign shall file a statement of organization within three
16 business days after its organization, or when it first has the expectation of receiving
17 contributions or making expenditures in the election campaign.

18 Anyone remotely familiar with campaign finance knows that the vast majority of money spent on
19 political activity is spent during the few weeks and months immediately preceding an election—
20 regardless whether the political committee is a continuing political committee or a temporary one.
21 Political committees commonly either increase their activity (if a continuing committee) or form
22 (if a temporary committee) within weeks or months of an election. For purposes of CR 12(b)(6),
23 these facts must be taken as true. Their short lifespan does not relieve them from the FCPA’s
24

¹⁹ RCW 42.17A.005(18) defines "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.”

1 disclosure requirements.

2 Further, § 205 indicates it applies to existing organizations that may not always be political
3 committees but that will **become** political committees within three weeks of an election. Section
4 205 requires the entity to file a statement of organization within three days after it is organized “**or**
5 **when it first has the expectation of receiving contributions or making expenditures in the**
6 **election campaign.**” (Emphasis added.) Thus, a pre-existing entity which is not a political
7 committee could become a political committee within weeks of an election and be subject to the
8 FCPA’s disclosure requirements for the brief time it acts as a political committee. The FCPA does
9 not apply a different standard to newly formed entities as opposed to entities with an ongoing
10 existence. The definition of “political committee” is the same for both, whether an organization is
11 active months before an election or mere weeks.

12 Fourth, regulations implementing RCW 42.17A.250 provide guidance for interpreting the
13 FCPA. WAC 390-16-049(2)(b)(iii) provides that an out-of-state political committee must “have
14 spent less than twenty percent of its aggregate expenditures for all political campaign activity
15 nationwide **at any point in any calendar year** to support and/or oppose Washington candidates
16 for state, local and judicial office, Washington ballot measures and/or Washington political
17 committees.” (Emphasis added.). WAC 390-16-049(3) provides that, if an out-of-state political
18 committee fails to satisfy this criteria, it “shall file as an in-state committee.”

19 Fifth, SEIU misinterprets both *EFF I* and *Utter* by turning the facts in those cases into the
20 legal standard. In *EFF I*, the Court explicitly laid out the “appropriate framework,” which is
21 determining “whether electoral political activity was a primary means of achieving the stated goals
22 and mission **during the period in question.**” *EFF I*, 111 Wn. App. 599 (emphasis added). The
23 Court went on to state that, if “one of the organization’s primary purposes was electoral political
24

1 activity **during the period in question,**” then “the organization was a political committee **for that**
2 **period...**” (emphasis added). *Id.* Though the Court determined that its standard, as applied to the
3 **specific factual allegation** that WEA was a political committee during the 1996 election cycle,
4 had not been met, nothing in *EFF 1* indicates that an organization could **only** be a political
5 committee over the course of a full election cycle. *EFF 1*’s language cited above indicates the
6 contrary. Similarly, in *Utter* the “relevant time period” in **that particular case** was “the 2007–
7 2008 campaign season,” *Utter*, 182 Wn.2d at 403, but the Court used broad language to discuss
8 the applicable rule regarding the time frame: “any relevant time period,” “specific time period,”
9 “at the relevant time,” *id.* at 430, and “during the relevant time period.” *Id.* at 412.

10 Sixth, the Attorney General has rejected SEIU’s contention that an entity may only be
11 considered a political committee “over the course of an election cycle.” On July 11, 2017, the
12 Attorney General filed litigation against SEIU Leadership Council 14 in Thurston County Superior
13 Court for failure to register and report as a political committee for calendar years 2014 and 2016,
14 each constituting periods of time less than an election cycle. *State of Washington v. SEIU*
15 *Leadership Council 14*, Case No. 17-2-04061-34.

16 Seventh, SEIU’s interpretation is bad policy because it allows political entities to avoid
17 reporting their political activities. SEIU contributed 89.5 percent of the total \$2,020,939.88 in cash
18 and in-kind contributions supporting I-1501. Am. Compl., ¶ 84. Any interpretation of the FCPA
19 which permits an entity to almost single-handedly pass a statewide ballot measure, while
20 simultaneously providing significant sums to other ballot measures and political committees,
21 without facing disclosure requirements of any kind is suspect on its face.

22 SEIU contends that requiring it to register as a political committee on a monthly basis
23 would be “absurd,” SEIU Br., 21, and “arbitrary,” *id.*, given that “a majority of organizations plan
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1 their budgets, fundraising activities, and advertising campaigns based on at least one calendar year
2 or election cycle.” *Id.* at 20. If SEIU operated as do “a majority of organizations” and planned its
3 intense burst of political activity in the summer and fall of 2016, setting funds aside for such
4 purpose, then SEIU became a political committee under the receiver of contributions prong for the
5 entire calendar year. Alternatively, if the union simply had significant amounts of cash available
6 and spontaneously determined in June 2016 to spend vast sums of it on electoral political activity
7 to single-handedly pass a ballot initiative, it should not be permitted to skirt disclosure
8 requirements by enlarging the scope of inquiry to dilute its significant campaign activity.

9 Defendant acts as if its behavior was outside its control. Far from being “arbitrary,”
10 Plaintiff’s allegations simply match SEIU’s **decision** to spend significant sums on political activity
11 in June 2016. There is nothing “absurd” about requiring an entity spending more than 50% of its
12 revenue and expenditures on political activities in a given month to report as a political committee
13 for that month. The alternatives are to (1) require the entity to disclose all of its nonpolitical activity
14 for the year or election cycle, which doesn’t serve the public’s interest in election transparency
15 and imposes a greater burden on the disclosing entity, or (2) allow the entity to escape disclosure
16 requirements altogether, which permits large, continuing organizations like SEIU to substantially
17 affect Washington elections for short periods while evading disclosure requirements.

18 **IV. ALTERNATIVELY, AT THIS STAGE, STRIKING ONE PRONG OF RCW 42.17A.005 IS**
19 **INAPPROPRIATE.**

20 At this stage in litigation, CR 12(b)(6) and case law countenance a court dismissing the full
21 claim, not dismissing particular *tests* for proving it. Thus, even if this Court believed that Plaintiff
22 had failed to provide sufficient evidence to support a claim under the expenditures prong of RCW
23 42.17A.005, this would not justify the Court’s ‘dismissing’ that prong of the complaint, since the
24

1 prong is not a separate claim.²⁰

2 Defendants cite to three non-precedential cases for the proposition that the Court may
3 selectively “dismiss” prongs of a claim at a the 12(b)(6) stage of a proceeding. The first case is a
4 King County Superior Court decision dismissing a loss of consortium claim. *Brandt v. Medtronic,*
5 *Inc.*, No. 12-2-07422-4 (Wash. Super. Ct. Sep. 19, 2013); *see* Stahlfeld Dec. Ex. 1 and 2. In *Brandt*,
6 the plaintiff alleged a number of products liability claims, and loss of consortium claims based on
7 each. One design defect claim was dismissed. The co-plaintiff’s loss of consortium claims
8 connected to the dismissed design defect claim was also dismissed, while the loss of consortium
9 claims based on the other products liability claims that survived also survived. The case does stand
10 for the proposition that a Court has the authority to pick and choose which prongs of a claim a
11 plaintiff may proceed under at the 12(b)(6) stage.

12 The second and third cases cited by the union, *Nguyen v. IBM Lender Bus. Process Servs.*
13 *Inc.*, No. CV11-5326RBL, 2011 WL 6130781 (W.D. Wash. Dec. 8, 2011) and *Cenveo Corp. v.*
14 *Celum Solutions Software GMBH & Co KG*, 504 F. Supp. 2d 574 (D. Minn. 2007) are federal
15 district court matters and, as such, are non-precedential. Not only this, they are unpersuasive
16 because the federal and state courts employ divergent pleading standards: in Washington, the
17 plaintiff states a claim upon which relief can be granted if it is “*possible* that facts could be
18 established to support the allegations in the complaint.” *McCurry v. Chevy Chase Bank, FSB*, 169
19 Wn.2d 96, 101, 233 P.3d 861, 862 (2010). Meanwhile, in the federal courts, a claim may be
20 dismissed unless the claim is “plausibly based upon the factual allegations in the complaint.” *Id.*

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22
23 ²⁰If an entity happens to meet two of the ways to become a political committee there are not two separate violations,
24 but one. By way of analogy, there can be multiple, non-exclusive ways to violate the criminal code. An assault can be
an offensive touching or the creation of imminent fear of bodily harm, for example, and it would be inappropriate for
the Court to exclude the prosecution from proceeding on one theory at the arraignment stage.

1 The latter is “a more difficult standard to satisfy,” because the judge can dismiss the claim, “even
2 where the law does provide a remedy for the conduct alleged by the plaintiff, if that judge does not
3 believe it is plausible the claim will ultimately succeed. *Id.* at 102. The Supreme Court has rejected
4 such restricted review, in Washington. *Id.* at 101.

5 If, after discovery, insufficient evidence is forthcoming to support a finding that Local 117
6 segregates its dues for political activity, then it may be appropriate for Defendants to make the
7 appropriate motion to strike as irrelevant any argument or evidence proffered towards that end.
8 Precluding an alternate avenue to establish a claim, though, is inappropriate under CR 12(b)(6).

9
10 **V. THE 2018 AMENDMENTS DO NOT BAR THE FREEDOM FOUNDATION’S CITIZEN ACTION.**

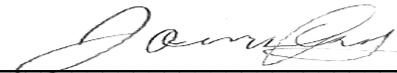
11 SEIU argues that the 2018 Amendments to the FCPA bar the Foundation’s action. As SEIU
12 notes, this Court previously rejected this argument. SEIU Br., 11, n. 8.²¹ SEIU offers no new
13 arguments; this Court should again reject this argument, for the identical reasons offered in the
14 Foundation’s Response to SEIU 775’s Motion to Dismiss, filed June 18, 2018.

15 **CONCLUSION**

16 This Court should deny SEIU’s Motion to Dismiss.²²

17 RESPECTFULLY SUBMITTED on October 29, 2018

18 By: _____


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21 SEIU includes this argument primarily to preserve this issue for appeal.

22 Page numbering began on the caption page, which is not counted against the page limit.

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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 October 29, 2018, I caused the foregoing Plaintiff Freedom Foundation’s Response to Defendant SEIU 775’s Motion to Dismiss 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:

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Signed October 29, 2018, at Olympia, Washington.


Kirsten Nelsen

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<input type="checkbox"/> EXPEDITE <input type="checkbox"/> No Hearing Set <input checked="" type="checkbox"/> Hearing is set Date: <u>November 9, 2018</u> Time: <u>9:00 a.m.</u> Judge/Calendar: <u>Dixon</u>

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, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">v.</div> SERVICE EMPLOYEES INTERNATIONAL UNION 775, a labor organization <div style="text-align: right;">Defendant.</div>	No. 18-2-00454-34 DEFENDANT SEIU 775'S REPLY IN SUPPORT OF MOTION TO DISMISS
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ARGUMENT

I. THE COMPLAINT IS PROCEDURALLY BARRED BECAUSE FREEDOM FOUNDATION FAILED TO FILE SUIT WITHIN TEN DAYS OF PUBLIC OFFICIALS REFRAINING FROM INITIATING ENFORCEMENT PROCEEDINGS AGAINST SEIU 775.

A. The Plain Language of Former RCW 42.17A.765 Creates a 10-Day Window for a Citizen Plaintiff to File a Lawsuit.

A fair reading of the words actually used in former RCW 42.17A.765(4)(a) (App. B.)¹ shows that the FCPA unambiguously limits the time to file a citizen suit to a ten-day window subsequent to governmental inaction regarding the citizen’s complaint. Subsection (i) demands, as a condition to filing suit, that the attorney general and county prosecutor first have “failed to commence an action [] within forty-five days after” receiving an initial notice described in 42.17A.765(4). RCW 42.17A.765(4)(a)(i). As a second condition, the person must, after sending the initial notice, have “further notified the attorney general and prosecuting attorney that the person will commence a citizen’s action *within ten days* upon their failure to do so.” Former RCW 42.17A.765(4)(a)(ii) (emphasis added). Finally, it must be the case that “[t]he attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice.” Former RCW 42.17A.765(4)(a)(iii).

Two things are clear on the face of subsection (ii) in the former statute: (1) that the person must warn that he/she/it² will bring an action “within ten days,” not at his/her/its discretion; and (2) that the 10-day period starts upon “their” – the attorney general’s and

¹ All cites to RCW 42.17A.765 in this section of the brief are to the statute as it existed on the date this action was filed, contained in Appendix B, filed April 16, 2018.

² The 10-day limitation applies to the citizen, not the officials, because it immediately follows the term “citizen’s action.” Former RCW 42.17.765(4)(a)(ii). Under the last antecedent rule, “courts construe the final qualifying words and phrases in a [clause] to refer to the last antecedent unless a contrary intent appears in the statute.” *Eyman v. Wyman*, __ Wn.2d __, 424 P.3d 1183, 1193 (2018); *see also Flowers v. Carville*, 310 F.3d 1118, 1124 (9th Cir. 2002) (last antecedent rule forecloses interpretations that result in “words leaping across stretches of text, defying the laws of both gravity and grammar”). Here, “citizen’s action” is the last antecedent before “within ten days.” In order to apply “within ten days” to the officials’ failure to file enforcement actions, as the Foundation suggests, the Court would have to shuffle the phrase from its current position to the end of the sentence. It would then not even modify an earlier antecedent, but a subsequent phrase, which is grammatically impossible. As discussed in SEIU 775’s Motion, a court is not permitted to edit a statute in that way. *See SEIU 775 Mot.*, 6-7.

1 prosecutor’s – “failure to do so.” Subsection (i) refers to the officials’ “fail[ure] to commence an
2 action hereunder....” Former RCW 42.17A.765(4)(a)(i). Thus, “failure to do so” in subsection
3 (ii) is an allusion to the “failure” to bring an enforcement proceeding introduced in subsection (i).
4 Subsection (iii) discusses that “failure” yet again, and provides the attorney general and county
5 prosecutor ten days from their receipt of the citizen’s second notice to bring an enforcement
6 action. Former RCW 42.17A.765(4)(a)(iii). Accordingly, the officials’ “failure” does not mean
7 refraining from *ever* suing an alleged violator, but refraining specifically within ten days of
8 receiving the citizen’s second notice. Subsection (ii)’s limitation on the time to file a citizen suit
9 “upon th[is] failure” thus means that the citizen must sue within ten days following the
10 expiration of the officials’ own ten-day period to act.³

12 The Foundation’s primary objection is that subsection (ii) facially requires the would-be
13 plaintiff only to “notify” the attorney general and county prosecutor that he will file suit within
14 ten days of their declining to bring their own enforcement actions; it does not *expressly* require it
15 to act in accordance with that notice. Found. Br., 4. Implicit in this reasoning is the premise that
16 a plaintiff may flout the terms of its own statutorily-required notice and face no adverse
17 consequences. That is wrong for two reasons. First, it would render the notice requirement
18 meaningless. It serves no purpose to require a party to warn others of one’s imminent actions and
19 then permit it to disregard its own warning, and courts must construe statutes “so as to avoid
20 rendering meaningless any word or provision.” *State v. Contreras*, 124 Wn.2d 741, 747, 880
21 P.2d 1000 (1994).⁴ Second, whenever a statute imposes a notice requirement, it establishes a

23 _____
24 ³ Alternatively, the use of the word “upon” could imply that the citizen’s window to sue is simultaneous with, not
25 successive to, the officials’ opportunity to file suit, such that whichever party files first precludes the other from
26 suing. In either case, what is not ambiguous is the existence of a 10-day window for a citizen to sue an alleged
violator and the window’s attachment to the officials’ decisions to refrain from suing, be it following – or coincident
with – the officials’ 10-day opportunity to do so. Under either interpretation, the instant lawsuit was untimely filed.

⁴ The Foundation’s citation to the dictionary definition of “notify” only supports this principle. Found. Br., 4. Since
by “notifying,” one “give[s] notice of or report[s] on the occurrence of” something, *id.*, the definition takes for
granted that something has or will “occur.” *Accord* Black’s Law Dictionary “Notification” (10th ed. 2014) (“A

1 concordant duty for the issuer thereof to act in accordance with the notice’s terms, breach of
2 which waives any rights that would otherwise follow. *See, e.g., Abbenante v. Giampietro*, 75
3 R.I. 349, 352, 66 A.2d 501 (R.I. 1949) (affirming dismissal of trespass and ejectment action
4 because landlord had statutory duty to give tenant notice to quit and then “act in accordance with
5 [notice] and accept no rent thereafter from the tenant until” case decided or tenant paid new rate,
6 whereas landlord instead accepted tenant’s payment at old rate as credit toward new rent).⁵ The
7 Foundation alleges it provided the notice required by former RCW 42.17A.765(4)(a)(ii), Compl.
8 ¶ 2, but, in view of the date it filed the original complaint, it plainly did not abide by the terms of
9 its own notice.⁶

10
11 **B. Case Law Supports the Imposition of a 10-Day Window to File a Citizen Suit.**

12 The Foundation argues that Washington precedents reject the interpretation SEIU 775
13 advances. But the opposite is true. To begin with, no court has been asked to construe the
14 language in question, so the issue is one of first impression. Second, *State ex rel. Evergreen*
15 *Freedom Found. v. WA Educ. Ass’n (“EFF I”)*, 111 Wn. App. 586, 49 P.3d 894 (2002), the only
16 case to even discuss the requirements of former RCW 42.17A.765(4)(a) in *dictum*, confirms that
17 a citizen has ten days to bring suit. Recapitulating the provision’s requirements, the court stated
18

19
20 person receives notification if someone else (1) informs the person of the *fact or of other facts* from which the
21 person has reason to know or should know *the fact.*”) (emphasis added).

22 ⁵ *Accord: Beverly Health & Rehab. Servs., Inc. v. N.L.R.B.*, 317 F.3d 316, 321 (D.C. Cir. 2003) (although union
23 provided required ten-day notice of intent to strike, protections of the National Labor Relations Act were lost when
24 strike did not begin until three days after that date); *Entrepreneur, Ltd. Yasuna*, 498 A.2d 1151, 1166 (D.C. 1985)
(landlord’s notice of default did not extinguish tenant’s right to exercise purchase option because “acceptance of rent
25 following notice of breach and failure to follow through on the terms of the notice constitute a waiver and permit the
26 exercise of the revived purchase option”); *LaGuardia Assoc. v. Holiday Hospitality Franchising, Inc.*, 92 F. Supp.
2d 119, 130 (E.D.N.Y. 2000) (franchisor waived right to terminate franchise agreement when, after providing
default notice and setting deadline to cure, it failed to act on notice for 10 months).

⁶ The Foundation’s only other textual argument is that the phrase “in fact” in subsection (iii) indicates that the “ten
days” referenced therein is the same as introduced in subsection (ii). Found. Br., 7-8. It is more likely, however, that
this phrase merely highlights that the ten days allotted to the officials is equal and symmetrical to the ten days
allotted to the citizen. But even if the 10-day window in subsection (ii) is identical to the window in (iii), which
SEIU 775 does not contend, that shows only that the citizen and officials are in a “race to the courthouse” during the
10-day span. *See supra*, note 3.

REPLY IN SUPPORT OF MOTION TO DISMISS - 3
CASE NO. 18-2-00454-34

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1 in relevant part that “the person must file a second notice with the AG and prosecuting attorney
2 notifying them that the person will *commence a citizen’s action within 10 days of this second*
3 *notice* if neither the prosecutor nor the AG acts.” 111 Wn. App. at 604 (emphasis added). *EFF I*
4 thus announced unequivocally that the time to file a citizen suit is temporally limited by the date
5 of the second notice. Therefore, rather than supporting its objection to SEIU 775’s motion, *EFF I*
6 refutes the Foundation’s own reading of the statute. Nor does *State ex rel. Evergreen Freedom*
7 *Found. v. Nat’l Educ. Ass’n* (“*EFF II*”), 119 Wn. App. 445, 91 P.3d 911 (2003) assist the
8 Foundation. It is true the Court there observes that “the statute’s clear intent [is] that the AG or
9 county prosecutor’s ‘commencement of an action’ within the proscribed time period precludes a
10 citizen’s action.” *Id.* at 453. But the question here is not what consequences follow either
11 official’s commencement of an action, but what consequences follow their *inaction*. *EFF II* does
12 not address that question.⁷

14 Other Washington cases, while not adjudicating FCPA claims, undermine the
15 Foundation’s reading. For instance, the Foundation asserts that the presence of a limitations
16 period tied to the date of the alleged violation precludes a filing deadline tied to the exhaustion of
17 administrative remedies, glossing over SEIU 775’s illustration of other statutory regimes where
18 these two kinds of deadlines coexist. *James v. County of Kitsap*, 154 Wn.2d 574, 115 P.3d 286
19 (2005), shows the Foundation’s claim to be false. There, plaintiff developers argued that their
20 petition for judicial review of a land use decision under the Land Use Petition Act (LUPA) was
21 not barred despite failing to file their petition within the 21 days of the county’s decision, as
22 required by statute. *Id.* at 587. They argued that their petition was instead “subject to [RCW

25 ⁷ At any rate, the Foundation ignores the context in which the excerpted comment was made. In *EFF II*, the Court of
26 Appeals clarified its inartful use of the word “tolling” in a prior order, which the Court feared might be construed to
imply that the attorney general’s mere referral of a complaint to the PDC would preclude a citizen suit. *Id.* at 451-52.
The Court stressed in the quoted language that it would take the attorney general or county prosecutor actually filing
an enforcement action, as opposed to referring a citizen complaint, to preclude a citizen suit. *Id.*

1 4.16.080(3)'s default] three-year statute of limitations,” which applied to that class of actions. *Id.*
2 The Washington Supreme Court disagreed, finding that the 21-day procedural requirement
3 controlled. *Id.* at 588.

4 Significantly, campaign finance law in at least one other state operates similarly to the
5 FCPA in this regard. In Colorado, a citizen plaintiff must submit a written complaint to the
6 secretary of state, who will in turn refer it to an administrative law judge. CO Const. Art. 28, §
7 9(2)(a). If the secretary declines to enforce the judge’s decision, the citizen may bring a private
8 cause of action “within thirty days of the decision.” *Id.* In addition to this post-administrative
9 exhaustion deadline, a citizen must also bring a private action “within one year of the date of the
10 violation....” *Id.*⁸

11
12 **C. The FCPA’s Legislative History Supports the Plain Reading.**

13 The Foundation’s arguments based on the FCPA’s legislative history are flawed. First,
14 Washington courts do “not look to legislative history if the provision [in question] is
15 unambiguous.” *WA Off Highway Vehicle Alliance v. State*, 176 Wn.2d 225, 235, 290 P.3d 954
16 (2012). As demonstrated above, the disputed portion of former RCW 42.17A.765(4)(a) is not
17 ambiguous. It plainly requires a citizen to file a lawsuit within a ten day window. Accordingly,
18 the Court cannot examine legislative history to construe what needs no further construction.
19 Second, the Foundation’s theory rests on an argument from silence. It points to no evidence that
20 the legislators in the 1975 session sought to give citizens unlimited time to file suit following the
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25 ⁸ Notably, Colorado courts enforce the plain language of these dual requirements, even where, without any dilatory
26 conduct by the citizen, its application may foreclose a private action. *See Campaign Integrity Watchdog, LLC v. Alliance for a Safe & Indep. Woodmen Hills*, ___ P.3d ___, 2017 WL 710593, at *3-5 (2017), *cert. granted in part*, No. 17SC284 (2017) (consistent with plain meaning, interpreting “violation” to refer to violator’s conduct, not to judge’s decision, although administrative process may take longer than one year, thereby exceeding limitations period).

1 second notice, in contradiction with the natural import of the words used.⁹ Third, if anything, the
2 legislative history confirms the plain reading. As the Foundation recites, the language that
3 ultimately emerged from conference committee was the product of a compromise between the
4 House – which sought to repeal the citizen suit provision entirely – and the Senate – which
5 sought to preserve it. Found. Br., 10. The Foundation recognizes that the modified language
6 imposed other burdens on would-be plaintiffs – such as requiring notice to the relevant county
7 prosecutor – and eliminated citizens’ financial incentives to engage in “bounty hunting.” *Id.* The
8 10-day window is of apiece with these compromise features.¹⁰

9
10 **II. SEIU 775 IS NOT A “POLITICAL COMMITTEE” UNDER THE EXPENDITURE PRONG.**

11 **A. *EFF I*’s Reasoning Applies to the Primary Purpose of Labor Unions as a Class.**

12 The Foundation argues that in reading *EFF I*, SEIU 775 mistakes a factual conclusion for
13 a rule of law. Found. Br., 14-16. SEIU 775 does invoke a rule, but an ancient one – like cases are
14 decided alike. *King v. King*, 162 Wn.2d 378, 397, 174 P.3d 659 (2007). SEIU 775 acknowledged
15 in its Motion that *EFF I* evaluated the primary purposes of a specific organization, WEA. SEIU
16 775 Mot., 12-13. But the Foundation ignores that those very purposes are shared by all labor
17 unions. It is therefore a small step to apply *EFF I*’s holding here.

18 A labor union’s purpose is to “enhance the economic and professional security of its
19 members,” not to engage in electoral political activity. *EFF I*, 111 Wn. App. at 601. This inheres
20 in the concept’s very definition. *See* Black’s Law Dictionary “Union” (10th ed. 2014) (“An
21 organization formed to negotiate with employers, on behalf of workers collectively, about job-
22

23
24 ⁹ For the reasons explained in Section I.B, *supra*, the presence of a statute of limitations based on “the date the
alleged violations occurred,” former RCW 42.17A.765(4)(a)(iv), does not conflict with the procedural bar. So the
Foundation’s discussion of the 2007 amendments through which this limitation period was added is a non-sequitur.

25 ¹⁰ The Foundation objects that SEIU 775’s reading of the statute would make a citizen suit “impossible” because it
26 would render the first opportunity to file such a suit the same as the last. Found. Br., 8. SEIU 775 said no such thing.
Would-be plaintiffs have a full ten days to bring FCPA claims against alleged violators following the expiration of
the public officials’ own 10-day opportunity to bring enforcement actions.

1 related issues such as salary, benefits, hours, and working conditions.”). Moreover, even if a
2 union’s primary purposes was theoretically mutable, its leaders are not able to change them at
3 their discretion where, as is the case here per the Foundation’s allegations, those purposes are
4 structurally baked into the organization through its constitution and bylaws. In addition, those
5 purposes are already recognized at law. The Foundation alleges, correctly, that SEIU 775 is a
6 501(c)(5) organization. Compl. ¶ 7; *see generally* 26 U.S.C. § 501(c)(5). According to the IRS’s
7 501(c)(5) guidelines, in order to obtain this designation, an entity billing itself as a “labor
8 organization” must have as its “principal purposes” essentially the same objectives enunciated in
9 *EFF I*.¹¹ Because the Foundation alleges SEIU 775 has obtained this designation, it concedes that
10 the federal government recognizes SEIU 775’s purposes match those of WEA in *EFF I*. Finally,
11 obligating a labor union to divulge its individual contributors does not accord with the
12 underlying purposes of the FCPA. The statute’s disclosure requirements were designed with the
13 qualification that “small contributions by individual contributors are to be encouraged, and that
14 not requiring the reporting of small contributions may tend to encourage such contributions.”
15 RCW 42.17A.001(9). The Foundation alleges that SEIU 775’s revenue derives “primarily” from
16 periodic “membership dues.” Compl. ¶ 69. These individual assessments, only a fraction of
17 which allegedly go to political activities, *id.* ¶ 77, are precisely the kind of small contributions
18 the act seeks to encourage without hazarding the disclosure of personal information.

21 Since, as a matter of law and fact, SEIU 775 shares the same primary purposes as the
22 union in *EFF I*, it cannot constitute a “political committee” under the expenditure prong.

23 **B. Taken on Their Own Terms, the Amended Complaint’s Allegations are Insufficient.**

24 Assuming *arguendo* that SEIU 775 does not, as a matter of law, lack a primary purpose

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26 ¹¹ *See* Exempt Organizations – Technical Instruction Program – for FY 2003, IRC 501(c)(5) Organizations, at J-8,
available at <https://www.irs.gov/pub/irs-tege/eotopicj03.pdf> (“The principal purposes of a labor organization must
be: [t]he betterment of the conditions of those engaged in a common pursuit, [t]he improvement of the grade of their
products, and [t]he development of a higher degree of efficiency in their respective occupations.”).

1 of engaging in electoral political activity, the Amended Complaint still fails to allege facts from
2 which it could be inferred that SEIU 775 has such a primary purpose. The Foundation argues that
3 its complaint is replete with “allegations that a factfinder must consider in determining if one of
4 SEIU’s primary purposes was political activity.” Found. Br., 15-16. But the analysis set forth in
5 *EFF I* does not ask whether an entity has a primary purpose to engage in “political activity” writ
6 large, but whether one such purpose is engaging in “electoral political activity,” *EFF I*, 111 Wn.
7 App. at 599 (emphasis added), which means attempting to “affect...governmental decision
8 making by supporting or opposing candidates or ballot propositions.” *Id.* (quoting *State v. Dan*
9 *J. Evans Campaign Comm.*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976)).¹² The Foundation, in its
10 Complaint and Response, attempts to bootstrap all kinds of wider political activity into this
11 category. For instance, the Foundation repeatedly discusses SEIU 775’s alleged lobbying efforts,
12 *see* Compl. ¶¶ 21, 25, 26, 28, 36, 47-49, 51-53, 79, 93, 95, statements encouraging members to
13 be become politically active, *see id.* ¶¶ 38, 88, efforts or expenditures concerning general
14 “political” or non-collective bargaining activities, *see id.* ¶¶ 39-41, 67-68, 83, 85-87, 89-91, 98,
15 and internal constitutional or bylaw provisions to advance the labor movement, hold politicians
16 accountable, and build a political voice for workers, *see id.* ¶¶ 44-45, 72-73. First, the FCPA
17 does require disclosure of lobbying activities but under a totally separate provision, *see* RCW
18 42.17A.615, which the Foundation does not allege SEIU 775 violated. Second, allegations about
19 SEIU 775’s broadly “political” statements and expenditures say nothing about whether it is
20 established primarily to support or oppose candidates or ballot propositions.
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23 Stripped of statements conflating “political” and “electoral” activities, the Complaint is
24

25
26 ¹² Case law’s focus specifically on electoral activity makes sense. Nearly all non-profit organizations have
“political” goals insofar as their efforts implicate public concerns. But *Evans* introduced a purposive inquiry in order
to limit the reach of the expenditure prong to entities established to act as engines of electoral campaigning.

1 still left with several allegations about SEIU 775’s contributions and expenditures to candidate
2 campaigns and ballot measures. But even these affirmatively recognize that SEIU 775’s alleged
3 electoral efforts are merely means to achieving a non-political end. The Foundation describes
4 SEIU 775’s “mission” as follows: “SEIU wants its members to receive favorable compensation
5 and benefits from the state of Washington, and therefore seeks to negotiate a favorable collective
6 bargaining agreement with the Governor and to secure funding from the Legislature.” Compl. ¶
7 59. SEIU 775 “therefore” allegedly engages in political activity to elect politicians who will
8 negotiate and approve favorable CBAs. *Id.* ¶ 60. According to the Foundation, that means
9 “SEIU’s mission” – i.e., its primary purpose – “is substantially advanced by favorable election
10 outcomes.” *Id.* ¶ 61. Thus, by the Foundation’s own allegations, and notwithstanding its
11 subsequent conclusory assertion, *id.* ¶ 123, SEIU 775’s primary purpose is to obtain economic
12 advantages for its members through collective bargaining, whereas it seeks “favorable election
13 outcomes” merely to “advance[]” that economic purpose. Under the complaint, “electoral
14 political activity is merely one means” SEIU 775 uses to achieve its nonpolitical goals. *EFF I*,
15 111 Wn. App. at 600. SEIU 775 is thus not a political committee under the expenditure prong.

18 **III. SEIU 775 WAS NOT A POLITICAL COMMITTEE IN JUNE 2016.**

19 The Foundation argues that it may select any timeframe it desires to measure political
20 committee status because that decision merely mirrors SEIU 775’s own expenditure choices.
21 Found. Br., 23. This theory conveniently ignores the judicial command to examine expenditures
22 through the lens of an entity’s primary purpose. Organizational “purpose” is not something that
23 vacillates from month to month. Yet this is what the Court would have to find to accept the
24 Foundation’s theory. That is facially absurd. The whole point of introducing a purposive inquiry
25 to the evaluation of political committee status was to eliminate the strategy of isolating
26 individual transactions, while ignoring the larger context in which an entity operates. *See Evans*,

1 86 Wn.2d at 503 (“...the Dan Evans Committee made a single contribution of \$500.00 to the
2 Early Birds Fund of the Washington Republican Central Committee... No other contributions of
3 a similar nature were made.”). By the Foundation’s logic, the Court could have asked whether
4 the Dan Evans Committee was a political committee solely on the day it contributed \$500. What
5 is more, the Foundation’s approach makes the tail wag the dog. The PDC and some trial courts
6 examine the relative percentage of an organization’s revenue spent on electoral activity, although
7 appellate courts have not endorsed this inquiry. *See EFF I*, 111 Wn. App. at 601. Even if
8 permitted, the percentage inquiry is only a proxy and one of a number of tools aimed at
9 identifying an entity’s purpose. These tools are all oriented to a long time horizon. *Id.* at 600; *see*
10 *also* SEIU Mot., at 15, n.10. The Foundation inverts the purposive analysis by selecting one non-
11 judicially recognized tool, ignoring all others, training it on a timescale that is not an appropriate
12 measure for the subject of inquiry, and letting that dictate the answer. For these reasons, SEIU
13 775 was not a political committee specifically in June 2016.¹³

14 CONCLUSION

15 For the foregoing reasons, SEIU 775’s Motion to Dismiss should be granted.

16 DATED this 5th day of November, 2018.

17
18 
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21 18 West Mercer Street, Suite 400
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23 Phone: (206) 257-6003
24 Fax: (206) 257-6038
25 *Attorneys for SEIU 775*

26 ¹³The Foundation also urges that it may examine periods shorter than an election cycle because RCW 42.17A.205 contemplates that an entity “organized within the last three weeks before an election” may be a political committee during its brief life. Found. Br. at 20-21. But that is fully consistent with an election cycle timescale. If an entity is “organized” for the first time shortly before an election, then its political committee status will be measured against the slice of the election cycle during which it operated, just as with longer-tenured entities. In each case, the election cycle is still the reference point.

DECLARATION OF SERVICE

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I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the state of Washington that on November 5, 2018, I caused the foregoing Defendant SEIU 775's Reply in Support of 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 5th day of November, 2018.


Jennifer Woodward, 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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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: <u>November 9, 2018</u> Time: 9:00AM Judge/Calendar: Dixon
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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

JX

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 *Daniel Benjamin Berger*

DTG
JD

The Court having considered the following:

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

No. 18-2-00454-34
[PROPOSED] ORDER DENYING MOTION



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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:~~

DI
JD

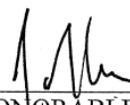
_____ ;
_____ ;

- 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.

JD
DI



THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

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Presented by:



Eric R. Stahlfeld, WSBA #22002
ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

Approved as to Form by:



DMITRI IGLITZIN, WSBA #17673
ATTORNEY FOR DEFENDANT

A P P E A R A N C E S

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- and
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I N D E X

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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

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EXPEDITE
No Hearing Set
Hearing is set
Date: December 7, 2018
Time: 9:00 am
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’S MOTION FOR
CERTIFICATION OF A QUESTION
FOR INTERLOCUTORY APPEAL,
PURSUANT TO RAP 2.3(b)(4)**

RELIEF REQUESTED

Plaintiff respectfully requests that, pursuant to RAP 2.3(b)(4), the Court certify that its November 9, 2018, Order Denying Defendant SEIU 775’s Motion to Dismiss involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

STATEMENT OF FACTS

Plaintiff Freedom Foundation filed its original complaint in this case on January 19, 2018. It filed an Amended Complaint on April 6, 2018. SEIU 775 filed the operative Motion to Dismiss on August 28, 2018. By order dated November 9, 2018, the Court denied SEIU 775’s

MOTION FOR CERTIFICATION UNDER RAP 2.3(b)(4) - 1
Case No. 18-2-00454-34

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1 Motion except to the extent it agreed the Foundation is not entitled to recover attorneys' fees
2 from SEIU 775, should it ultimately prevail in this matter.

3 In its Motion, SEIU 775 argued that the Foundation's suit was procedurally barred
4 because it had not filed its citizen action within 10 days' of the Attorney General's and
5 Prosecuting Attorney's (together, "public officials") failure to initiate their own enforcement
6 proceedings, as SEIU 775 argued was required under *former* RCW 42.17A.765(4)(a). In its oral
7 ruling memorializing its order, the Court held in part that, although subsection (ii) of the relevant
8 provision may discuss a citizen suit being filed "within ten days" of the public officials' failure
9 to act, this language established only a notice requirement and did not limit a citizen plaintiff's
10 ability to file suit at any point after the officials' failure to act. Before it embarks on extensive
11 litigation related to the Foundation's claims, which SEIU 775 anticipates will likely entail
12 significant discovery requested by the Foundation, SEIU 775 intends to seek interlocutory
13 discretionary review of the Court's ruling regarding the existence of a procedural bar. To
14 facilitate and ensure that prompt appellate review occurs, SEIU 775 presently seeks certification
15 from this Court that the underlying issue involves a controlling question of law as to which there
16 is substantial ground for a difference of opinion and that immediate review of its order may
17 materially advance the ultimate termination of the litigation.
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20 **STATEMENT OF ISSUES**

21 Whether the Court should certify that its November 9, 2018, Order Denying Defendant
22 SEIU 775's Motion to Dismiss involves a controlling question of law as to which there is
23 substantial ground for a difference of opinion and that immediate review of the order may
24 materially advance the ultimate termination of the litigation.
25

26 MOTION FOR CERTIFICATION UNDER RAP 2.3(b)(4) - 2
Case No. 18-2-00454-34

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ARGUMENT

RAP 2.3(a) provides that “any act of the superior court not appealable as a matter of right” may be reviewed by discretionary review. RAP 2.3(b)(4) provides that discretionary review may be granted by the Court of Appeals in a number of circumstances, one of which is where the trial court has certified that the ruling in question “involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.” Both criteria established by RAP 2.3(b)(4) apply here.

A. There is a Controlling Question of Law as to Which There is Substantial Ground for a Difference of Opinion.

The Court’s ruling concerning the existence under *former* RCW 42.17A.765(4)(a) of a ten-day window for a potential citizen plaintiff to file an action involves a controlling question of law as to which there is substantial ground for a difference of opinion. The question is controlling because, as the Foundation does not dispute, it did not file suit within ten days of the Attorney General or Prosecuting Attorney failing to initiate enforcement proceedings against SEIU 775. Thus, should SEIU 775’s construction of *former* RCW 42.17A.765(4)(a) prevail, the Foundation’s suit would be procedurally barred.

There is also substantial ground for a difference of opinion as to the correct interpretation of the relevant statutory language. In its oral ruling, the Court did not reject SEIU 775’s argument that the plain language of *former* RCW 42.17A.765(4)(a)(ii) provides that the “action” to be filed “within ten days” of the public officers’ failure to act is that of the citizen, not the officers. The Court ruled only that subsection (ii) imposes a notice requirement, such that while a citizen may be required to notify the public officers that he or she will file suit within 10 days of

1 their failure to do so, the citizen is not actually required to consummate the warning as described,
2 should the officials fail to act.

3 While the undersigned respects the trial court's ruling on this question, reasonable minds
4 may at the very least disagree as to whether construing subsection (ii) solely as a notice
5 requirement renders the term "within ten days" superfluous. It is a standard rule of statutory
6 interpretation that courts must construe statutes "so as to avoid rendering meaningless any word
7 or provision." *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). But under the
8 Foundation's reading, the same result obtains regardless of whether the citizen's second notice
9 states that he will file suit within ten days of the officials' failure to act or merely that he will file
10 suit at some indefinite point thereafter. In either case, the citizen is permitted to ignore the
11 required notice terms and file suit at his leisure. It is therefore not only arguable, but in fact
12 inescapable, that permitting a citizen to file suit at any point after the failure of the public
13 officials to act renders the phrase "within ten days" mere surplusage.

14
15 Reasonable minds may also disagree as to whether, as a matter of common law principle,
16 a citizen is bound to comply with his own pronouncement of when he will file suit. Decisions in
17 a variety of contexts illustrate the rule that whenever a statute or policy imposes a notice
18 requirement, there is a concordant duty for the issuer thereof to act in accordance with the
19 notice's terms, breach of which waives any rights that would otherwise follow. *See, e.g.,*
20 *Abbenante v. Giampietro*, 75 R.I. 349, 352, 66 A.2d 501 (R.I. 1949) (affirming dismissal of
21 trespass and ejectment action because landlord had statutory duty to give tenant notice to quit
22 and then "act in accordance with [notice] and accept no rent thereafter from the tenant until" case
23 decided or tenant paid new rate, whereas landlord instead accepted tenant's payment at old rate
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MOTION FOR CERTIFICATION UNDER RAP 2.3(b)(4) - 4
Case No. 18-2-00454-34

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1 as credit toward new rent); *accord Beverly Health & Rehab. Servs., Inc. v. N.L.R.B.*, 317 F.3d
2 316, 321 (D.C. Cir. 2003) (although union provided required ten-day notice of intent to strike,
3 protections of the National Labor Relations Act were lost when strike did not begin until three
4 days after that date); *Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1166 (D.C. 1985) (landlord's
5 notice of default did not extinguish tenant's right to exercise purchase option because
6 "acceptance of rent following notice of breach and failure to follow through on the terms of the
7 notice constitute a waiver and permit the exercise of the revived purchase option"); *LaGuardia*
8 *Assoc. v. Holiday Hospitality Franchising, Inc.*, 92 F. Supp. 2d 119, 130 (E.D.N.Y. 2000)
9 (franchisor waived right to terminate franchise agreement when, after providing default notice
10 and setting deadline to cure, it failed to act on notice for 10 months). Although there does not
11 appear to be any binding Washington precedent on this point, certification of this issue will help
12 clarify the scope of this principle's application.
13

14 The legal question at issue here involves a potential procedural bar to suit and turns on
15 the resolution of a disputed statutory construction. Superior courts have certified interlocutory
16 orders for discretionary review and appellate courts have independently granted such review in
17 similar contexts. For instance, in *Williams-Moore v. Estate of Shaw*, 122 Wn. App. 871, 96 P.3d
18 433 (2004), the trial court was faced with the issue of whether a personal injury plaintiff who
19 was nominally appointed as the personal representative of the estate of the personal injury
20 defendant could accept service on behalf of the estate for her own personal injury complaint. *Id.*
21 at 873. The defendant estate moved for summary judgment in part on the ground that the plaintiff
22 was not qualified to act as personal representative because she had not filed a bond, as ordered
23 by the probate commissioner, at the time she accepted service of the complaint. *Id.* at 875-76.
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MOTION FOR CERTIFICATION UNDER RAP 2.3(b)(4) - 5
Case No. 18-2-00454-34

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1 After denying the defendant’s motion, the trial court certified the issue under RAP 2.3(b)(4). *Id.*
2 The appellate court accepted review and, analogizing to the statute governing the appointment of
3 guardians, found that filing a bond was a condition precedent to becoming an estate’s
4 representative, notwithstanding the probate statute’s silence on the requirement. *Id.* at 877-78.
5 Appellate courts have also accepted review under RAP 2.3(b)(4) when presented with questions
6 of first impression. *See In re Parentage of J.B.R.*, 184 Wn. App. 203, 207-08, 336 P.3d 648
7 (2014) (accepting review of interlocutory order dismissing petition for de facto parentage where
8 court presented for first time with question of whether “stepparent may acquire de facto parent
9 status when a child has two [legally fit biological] parents”); *see also Lui v. Essex Ins. Co.*, 186
10 Wn. App. 1045 (2015) (unpublished) (pursuant to RAP 2.3(b)(4), trial court certified ruling that
11 insurance policy’s vacancy provision did not suspend coverage of plaintiff’s claim where court
12 found “that its legal interpretation of the insurance policy language is a novel controlling
13 question of law about which there are grounds for disagreement”).¹ As in *Williams-Moore*, SEIU
14 775 requests that the court certify a question implicating a procedural bar to suit based on
15 disputed statutory language. And as in *J.B.R.* and *Lui*, the existence or non-existence of the
16 procedural bar raises a novel legal question that no court has previously addressed.

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19 Because there is a controlling question of law as to which there is substantial ground for a
20 difference of opinion, the first prong of certification under RAP 2.3(b)(4) is satisfied.

21 **B. Immediate Review of the Court’s November 9, 2018 Order Will Materially Advance**
22 **the Ultimate Termination of the Litigation.**

23 Obtaining review of the Court’s November 9, 2018 order now would create significant
24

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26 ¹ Pursuant to GR 14.1(a), *Lui v. Essex Ins. Co.* is being cited herein as nonbinding authority only, to be accorded
such persuasive value as this court deems appropriate.

1 economy in the litigation, as it may eliminate the need for protracted discovery and litigation
2 concerning SEIU 775's political committee status – which, in the oral ruling memorialized by
3 the same order, the Court found necessary to resolve the Foundation's claims on the merits.
4 Indeed, if forced to litigate whether SEIU 775 qualifies as a political committee, the Foundation
5 would likely seek significant and broad discovery on this point. In that scenario, SEIU 775
6 would be deeply prejudiced by the necessity of expending time and money to address this factual
7 issue, when the case may be resolved on the insufficiency of fulfilling a threshold requirement.
8 Conversely, if a court of appeals adopts SEIU 775's construction of *former* RCW
9 42.17A.765(4)(a), all of the Foundation's claims would fail as a matter of law because it is
10 undisputed that the Foundation did not file suit within ten days' of the public officials' failure to
11 act on any of its claims. It would therefore be unnecessary to examine the potentially fact-
12 intensive questions of whether SEIU 775 has a primary purpose of engaging in electoral political
13 activity or whether it expects to receive contributions within the meaning of the FCPA.² Nor
14 would the Court need to address the novel legal questions – not reached in its November 9, 2018
15 order – of whether labor unions lack a primary purpose to engage in political activity as a matter
16 of law or whether an entity's political committee status may be evaluated on a month-to-month
17 basis.
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20 Accordingly, there is a significant possibility that immediate review will expedite the
21 disposition of this case, thereby satisfying the second prong of certification under RAP 2.3(b)(4).
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25 ² SEIU 775 does not concede that determining its primary purpose is a fact-intensive inquiry. It maintains, as alluded
26 to *infra*, that as a bona fide labor union, it inherently lacks a primary purpose to support or oppose candidates for
political office or ballot initiatives. Nonetheless, unless the Court is inclined to limit discovery on the expenditure
prong, the Foundation is likely to seek extensive and burdensome discovery on this issue, the propriety of which
may necessitate additional motion practice.

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CONCLUSION

For the foregoing reasons, SEIU 775 respectfully requests that this Court certify that its November 9, 2018, Order Denying Defendant SEIU 775’s Motion to Dismiss involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of that order may materially advance the ultimate termination of the litigation.³

RESPECTFULLY SUBMITTED this 27th day of November, 2018.



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³ Pursuant to RAP 7.1, this court “retains full authority to act” in this case, because review has not yet been accepted by the appellate court and the appellate court has not directed otherwise.

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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 November 27, 2018, I caused the foregoing Defendant's Motion For Certification Of A Question For Interlocutory Appeal, Pursuant To RAP 2.3(b)(4), to be filed with the Thurston County Superior Court, and a true and correct copy of the same to be sent via e-mail, per agreement of the parties, 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

Executed in Seattle, Washington, this 27th day of November 2018.


Jennifer Woodward, Paralegal

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EXPEDITE
No Hearing Set
Hearing is set
Date: December 7, 2018
Time: 9:00 am
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.

SEIU 775, a labor organization

Defendant.

No. 18-2-00454-34

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION FOR
CERTIFICATION OF A
QUESTION FOR
INTERLOCUTORY APPEAL,
PURSUANT TO RAP 2.3(b)(4)**

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ARGUMENT

The Foundation does not dispute that the proper interpretation of *former* RCW 42.17A.765(4)(a) is a controlling question, insofar as endorsing SEIU 775’s construction would require dismissal of all of the Foundation’s claims. Nor does it attempt to refute the obvious reality that resolving this threshold issue would expedite resolution of the case, avoid potentially unnecessary discovery, and obviate the need for the Court to rule on other novel FCPA questions. Instead, the Foundation argues primarily that no substantial ground for a difference of opinion exists, based largely on the arguments it made on the merits with respect to SEIU 775’s underlying motion to dismiss. To begin with, these arguments barely address SEIU 775’s counterarguments, much less prove that they lack merit and cannot serve as bases for substantial disagreement. In addition, the Foundation’s arguments are either erroneous or irrelevant, and, with one exception, not the actual basis for the Court’s underlying ruling.

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Next, in order to avoid addressing whether SEIU 775’s reading presents a reasonable interpretation of the statute, the Foundation interposes a non-controlling federal case to suggest the existence of some higher “substantiality” ground which SEIU 775 fails to achieve. But pursuant to un rebutted Washington case law, the issue disputed here is plainly of the sort that trial and appellate courts have found worthy of review. At any rate, SEIU 775 meets the federal standard for discretionary review.

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Finally, the Foundation alleges that SEIU 775 has been dilatory in bringing its motion to dismiss. This claim is both untrue and irrelevant to the present inquiry.

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A. There is Substantial Ground for a Difference of Opinion as to Whether *former* RCW 42.17A.765(4)(a) Requires FCPA Citizen Suits to be Filed Within 10 Days of the Public Officers’ Failure to Act.

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The Foundation expends most of its effort recapitulating the arguments it made on the merits in opposition to SEIU 775’s motion to dismiss. However, none of these arguments refute SEIU 775’s showing that its interpretation of *former* RCW 42.17A.765(4)(a) creates substantial

1 ground for a difference of opinion concerning the provision’s correct reading. SEIU 775 presented
2 two grounds on which one could reasonably conclude that subsection (ii) imposes more than a notice
3 requirement: first, that absent such a finding, the phrase “within ten days” becomes mere surplusage
4 because, even if a citizen complainant includes that term in his second notice, he may proceed just as
5 if he had not; and second, that common law principles require the issuer of a notice to act in
6 accordance with his stated plans in order to obtain the rights that issuing the notice confers. The
7 Foundation gives scant attention to either argument.

8 As to whether its reading would render the phrase “within ten days” meaningless, the
9 Foundation observes first that the Court already rejected this argument. In fact, the Court did not
10 address the question of surplusage at all in its oral ruling, as confirmed by the transcript of the
11 proceeding, the relevant portion of which the Foundation incorporates into its own brief. *See Found.*
12 *Res.*, at 6, n.4. But even if the Court had rejected this specific component of SEIU 775’s argument,
13 that fact would not affect the Court’s inquiry here. SEIU 775 is not asking for the Court to
14 reconsider its November 9, 2018 ruling. Indeed, SEIU 775 explained at the outset of its Motion that
15 it “respects the trial court’s ruling on this question.” SEIU 775 Mot. at 4. It asks only for the Court to
16 certify the issue for discretionary review because it is susceptible to a reasonable difference of
17 opinion. The Foundation also urges that issuing the notice as described would not be meaningless
18 because doing so has the effect of warning the public officials “that they have only ten days to act
19 should they wish to control the FCPA allegation.” *Found. Res.* at 7. However, the Foundation’s
20 reading once again confuses or purposely alters the requisite notice language. It is true that a notice
21 would serve the proposed warning function if it said that the citizen “will commence a citizen’s
22 action upon *their* failure to do so *within ten days*.” But that is not what *former* RCW
23 42.17A.765(4)(a)(ii) requires the notice to say. The provision states instead that after sending the
24 initial notice, the citizen must “further notif[y] the attorney general and prosecuting attorney that the
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1 person [i.e., the citizen] will commence a citizen’s action *within ten days* upon their failure to do
2 so.” *Former* RCW 42.17A.765(4)(a)(ii) (emphasis added). The phrase “within ten days”
3 unambiguously applies to the filing of the citizen’s action, not to the public officials’ enforcement
4 actions. *See* SEIU 775 Mot. to Dismiss, 8.¹ Accordingly, and as this Court recognized in its oral
5 ruling, *see* Found. Res., 6, n.4, the notice must warn the public officials that the *citizen* will sue
6 within ten days of the public officials failing to act – i.e., within ten days of the expiration of the
7 officials’ own 10-day window to file suit. It is the notice’s required warning regarding when and
8 how the citizen will proceed after it gains control of the FCPA claims – not what the public officials
9 must do to avoid losing control over them – that SEIU 775 contends becomes surplusage under the
10 Court’s current reading.

11 The Foundation says even less about SEIU 775’s second ground for finding substantial
12 ground for a difference of opinion. The Foundation concedes that SEIU 775’s “invitation to apply
13 common law principles” to determine the consequences of the second notice is “perhaps cognizable
14 as a legal theory.” Found. Res., 9. However, it adds conclusorily that such a theory “does not make
15 the question it seeks to certify novel and complicated” and “certainly” does not present “‘substantial’
16 grounds for a difference of opinion.” *Id.* The Foundation does not explain why, despite being
17 “cognizable,” SEIU 775’s second ground does not meet the “substantiality” standard.² If it is the
18 case, as SEIU 775 contends and supports with authorities, *see* SEIU 775 Mot., 4-5, that a duty to act
19 in accordance with one’s notice follows inherently from the notice’s issuance, such a duty obviates
20 any objection that *former* RCW 42.17A.765(4)(a)(ii) contains no directive to act affirmatively. SEIU
21 775 accepts that this principle conflicts with the Court’s ruling. But absent any explanation as to why
22

23 _____
24 ¹ Ironically, despite nominally agreeing that the statutory language is plain and unambiguous, Found. Res., 5-6, the
25 Foundation continues to offer interpretations that rearrange the provision’s material terms. If the Foundation believes
26 that the relevant language should read “upon their failure to do so within ten days,” then it – not SEIU 775 – is the
party offering an interpretation contrary to the statute’s plain language.

² As discussed *infra*, the Foundation’s articulation of the RAP 2.3(b)(4) standard has no basis in Washington law.

1 the cited authorities do not offer persuasive guidance on the existence of such a duty, SEIU 775 has
2 at the very least raised a substantial ground for a difference of opinion concerning the proper
3 interpretation of the disputed text.

4 Elsewhere in its brief, the Foundation explains why it believes no such duty applies, again
5 without addressing the substantial grounds for differences of opinion raised by SEIU 775.
6 Notwithstanding its own modification to former RCW 42.17A.765(4)(a)(ii)'s text, *see* n.1, *supra*, the
7 Foundation notes the parties' agreement that the statutory language is plain and unambiguous.
8 Found. Res., 6. Therefore, the Foundation concludes, to recognize the common law duty would
9 disturb the statute's otherwise unambiguous command. *Id.* Unlike the Foundation's other arguments,
10 the Court did adopt this reasoning in its oral ruling. *See id.*, n.4. But this does not show that there is
11 no substantial ground for a difference of opinion. It establishes only the obvious predicate for
12 discretionary review – that there be some determination a court makes with which the moving party
13 differs.

14 Moreover, the Foundation's recitation of the underlying briefing elides an important
15 distinction. In its motion to dismiss and reply in support thereof, SEIU 775 explained that the statute
16 unambiguously specified the terms of the second notice itself. Mot. Dismiss, 7, n.5. The notice
17 plainly must promise to file suit within a 10-day period. *Id.* SEIU 775 then explained that "the
18 implication that follows from having to issue the second notice is a conceptually distinct and
19 posterior consideration to the meaning of the notice itself." *Id.* At the same time, it readily
20 acknowledged that the statute did not directly speak to that posterior consideration. *See* SEIU 775
21 Mot. Dismiss, 7, n.5. (statute does not "expressly command[] [the citizen] to act consistently with
22 the terms of his notice"); SEIU 775 Reply, 2 ("...it does not *expressly* require [the citizen] to act in
23 accordance with that notice") (emphasis in original). SEIU 775's argument that the citizen must act
24 in accordance with the notice was based on an inference – albeit one that is obvious and inescapable
25

1 once one recognizes the notice’s precise content. Thus, while SEIU 775 agrees that statute is indeed
2 “plain and unambiguous” with respect to the notice content, there simply is no “plain and
3 unambiguous” language that can resolve the issue for which SEIU 775 presently seeks discretionary
4 review. The Foundation relies on statutory silence; SEIU 775 relies on the relationship between the
5 notice’s content, the canon against surplusage, and the aforementioned common law principle.
6 Deciding which approach is correct is a matter over which there are at least substantial grounds for
7 differing opinion.

8 The Foundation’s remaining arguments do not address the RAP 2.3(b)(4) grounds raised by
9 SEIU 775, nor do they reflect the Court’s own reasoning. Accordingly, while the Foundation is free
10 to invoke these theories on appeal, should discretionary review be granted, they say next to nothing
11 about whether review is appropriate in the first place. Moreover, these arguments err on the merits.
12 The Foundation argues that “no [c]ourt has ever interpreted former RCW 42.17A.765 to add an
13 affirmative requirement to file [a citizen suit] within ten days of the notice.” Found. Res., 6. Once
14 again, the Foundation misunderstands SEIU 775’s statutory reading. As explained above, the issue is
15 whether a citizen must file suit within ten days of the public officers’ failure to act, not within ten
16 days of issuing the second notice.³ More importantly, the Foundation’s assertion is misleading
17 because just as no court has interpreted the statute as SEIU 775 construes it, neither has any
18 interpreted it as the Foundation demands. Indeed, the silence in the case law demonstrates that the
19 issue for which SEIU 775 seeks discretionary review is one of first impression, and therefore
20 appropriate for appellate consideration. *See In re Parentage of J.B.R.*, 184 Wn. App. 203, 207-08,
21 336 P.3d 648 (2014).

22
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25 ³ However, as discussed *infra*, the only case to even discuss the requirements of *former* RCW 42.17A.765(4)(a) in
26 *dictum* suggests precisely what the Foundation claims no court has ever ruled.

1 Next, the Foundation revives the claim, raised briefly for the first time at oral argument,
2 that the Attorney General’s occasional requests to the Foundation for extensions to act demonstrates
3 that the ten-day window applies to the public officers and not to the citizen. *Id.* at 7-8. The
4 Foundation’s reasoning on this score again stems from its mistaken impression that SEIU 775 is
5 arguing the citizen is bound by a 10-day window while the public officers are not. That is not SEIU
6 775’s claim. SEIU 775 argues that subsection (ii) and (iii) describe two separate filing windows
7 which run successively, the first governing the public officials, the second governing the citizen.
8 Thus, the fact that the AG requests, and the Foundation grants, an extension for the AG to act shows
9 only that the *public officers’* window may be extended by *mutual agreement*, not that the *citizen’s*
10 subsequent window may be extended *unilaterally*.

11 Finally, the Foundation repeats the contention that the FCPA’s legislature history
12 demonstrates subsection (ii) imposes only a notice requirement. For the reasons discussed in SEIU
13 775’s briefs on its motion to dismiss, that claim is untrue.

14 **B. The Issue for Which SEIU 775 Seeks Discretionary Review Satisfies RAP**
15 **2.3(b)(4), Notwithstanding the Foundation’s Citation to Irrelevant Case Law.**

16 Failing to explain why SEIU 775 has not raised an issue over which there is substantial
17 ground for differing opinions, the Foundation tinkers with the meaning of “substantial” itself. The
18 Foundation begins by acknowledging the standard for discretionary review set forth in RAP
19 2.3(b)(4). However, it then attempts to modify that standard by citing a non-controlling federal case
20 and inferring from it an imagined level of “substantiality” that SEIU 775 has failed to satisfy. *See*
21 *Found. Res.* at 5, 8-9 (citing *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010)). First, it is
22 not necessary to consult federal law because Washington law has articulated and applied the
23 “substantial ground” standard on numerous occasions. Notably, the Foundation makes no attempt to
24 address the cases SEIU 775 cited which presented analogous interpretive disputes and that were
25 found to have served as appropriate bases for discretionary review. *See Williams-Moore v. Estate of*

1 *Shaw*, 122 Wn. App. 871, 96 P.3d 433 (2004); *In re Parentage of J.B.R.*, 184 Wn. App. 203, 207-08,
2 336 P.3d 648 (2014); *Lui v. Essex Ins. Co.*, 186 Wn. App. 1045 (2015) (unpublished).⁴ As these
3 cases demonstrate, substantial ground for a difference of opinion exists when there are multiple
4 plausible readings of dispositive statutory language – precisely the case here.

5 Second, even if *Couch* reflects the requirements of RAP 2.3(b)(4), SEIU 775 has easily
6 satisfied that case’s framing of the standard for discretionary review. The Foundation claims that the
7 disputed issue is neither subject to a court of appeals split nor a novel and complicated question of
8 first impression. With respect to the first point, SEIU 775 never argued that there was a circuit split
9 and making such a showing is not required to obtain discretionary review even under *Couch*. See
10 *Couch*, 611 F.3d at 633 (describing circumstances pursuant to which controlling law is unclear in the
11 alternative). With respect to the second point, the Foundation is simply wrong that any court has
12 directly addressed the instant question. As previously explained, *State ex rel. Evergreen Freedom*
13 *Found. v. Wash. Educ. Ass’n*, 111 Wn. App. 586, 49 P.3d 894 (2002), is the only case to even
14 discuss former RCW 42.17A.765(4)(a), which it did in *dictum*. But that *dictum* supports SEIU 775’s
15 reading because it describes the citizen’s opportunity to file suit as limited to a 10-day window
16 concurrent with the public officer’s – a reading *more* rigorous than SEIU 775’s. *Id.* at 604 (“the
17 person must file a second notice with the AG and prosecuting attorney notifying them that the person
18 will *commence a citizen’s action within 10 days of this second notice* if neither the prosecutor nor
19 the AG acts.”)(emphasis added).⁵ Further, the Foundation merely assumes the conclusion attached to
20 its merits arguments to characterize the issue as uncomplicated. Even granting the plausibility of the
21

22 _____
23 ⁴ Pursuant to GR 14.1(a), *Lui v. Essex Ins. Co.* is being cited herein as nonbinding authority only, to be accorded such
persuasive value as this court deems appropriate.

24 ⁵ The Foundation claims that while SEIU 775’s legal *theory* may be one of first impression, the *issue* itself is not. Found.
25 Res., 10. The Foundation is mistaken. It fails to identify a solitary case that addresses the *issue* of whether the FCPA
contains a 10-day filing window for citizen suits. That SEIU 775 presents this issue in conjunction with its own theory
26 as to why such a window exists is a function of operating in an adversarial legal system with real parties in interest,
instead of one in which non-interested spectators may solicit advisory opinions from courts.

1 Court and the Foundation's reading, the issue is indeed complicated because, as explained, by
2 relying on the absence of an affirmative command in *former* RCW 42.17A.765(4)(a)(ii), one risks
3 violating the rule against surplusage and the common law principle obliging one to act in accordance
4 with one's notice.

5 **C. SEIU 775 Raised the Procedural Bar Issue Properly and in Good Faith.**

6 Lastly, the Foundation makes the unsubstantiated claims that SEIU 775 is seeking to delay
7 this action and that had SEIU 775 raised its procedural bar argument sooner, the Foundation could
8 have amended its notices and complied with the statutory requirements. In addition to being entirely
9 irrelevant to the present inquiry, this tangent is off-base. SEIU 775 raised the procedural bar
10 argument in good faith as soon as it realized the basis for making it and then properly struck its prior
11 motion to dismiss. Moreover, it is SEIU 775 which seeks to resolve this suit expeditiously by
12 focusing on a potentially dispositive threshold issue. Additionally, the Foundation offers no support
13 for the notion that a citizen may cure a procedural defect by dismissing an active complaint, sending
14 duplicative notices to the public officials, and filing a new complaint alleging the same exact
15 violations as before. To the contrary, courts frown upon such tactics. *Cf. Lockett v. E.P.A.*, 319 F.3d
16 678, 688-89 (5th Cir. 2003) (opining, without deciding, that permitting Clean Water Act citizen
17 plaintiff to file repeat notices to cure defect in original set "seems contrary to the purpose" of
18 statutory framework, which set time limit for filing suit tied to date notices issued).

19 **CONCLUSION**

20 For the foregoing reasons, SEIU 775 respectfully requests that this Court grant SEIU 775's
21 Motion for Certification of a Question for Interlocutory Appeal.

22 RESPECTFULLY SUBMITTED this 5th day of December, 2018.

23
24 _____
25 Daniel Iglitzin, WSBA No. 17673
26 Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979

REPLY IN SUPPORT OF MOTION FOR CERTIFICATION - 8
CASE NO. 18-2-00454-34

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Benjamin Berger, WSBA No. 52909
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robbins@workerlaw.com
franco@workerlaw.com
berger@workerlaw.com

Attorneys for Defendant SEIU 775

REPLY IN SUPPORT OF MOTION FOR CERTIFICATION - 9
CASE NO. 18-2-00454-34

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DECLARATION OF SERVICE

I, Jennifer Woodward, declare under penalty of perjury under the laws of the state of Washington that on this 5th day of December, 2018, I caused the foregoing Reply in Support of Motion for Certification 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 5th day of December, 2018.


Jennifer Woodward, Paralegal

DECLARATION OF SERVICE
CASE NO. 18-2-00454-34

LAW OFFICES OF
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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 DEC -7 AM 10: 05

Linda Myhre Enlow
Thurston County Clerk

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

18-2-00454-34
ORDYMT 75
Order Denying Motion Petition
4401135



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,

No. 18-2-00454-34

Plaintiff,

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

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION 775, et al.,

Defendants.

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;

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



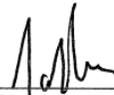
P.O. Box 552, Olympia, WA 98507
P: 360.956.3482 | F: 360.352.1874

- 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

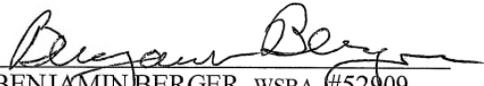
James Dixon

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

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BENJAMIN BERGER, WSBA #52909
ATTORNEY FOR DEFENDANTS

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

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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, <div style="text-align: right;">Plaintiff,</div> v. SEIU 775, a labor organization, <div style="text-align: right;">Defendant.</div>	No. 18-2-00454-34 DEFENDANT SEIU 775'S NOTICE OF DISCRETIONARY REVIEW TO THE COURT OF APPEALS, DIVISION II
---	---

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

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

/////

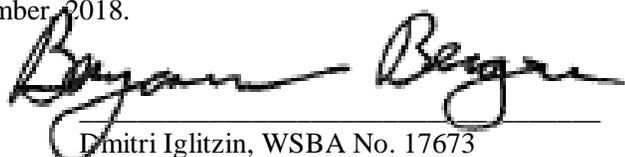
NOTICE OF DISCRETIONARY REVIEW - 1
CASE NO. 18-2-00454-34

LAW OFFICES OF
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James G. Abernathy, WSBA No. 48801
Eric R. Stahlfeld, WSBA No. 22002
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
(253) 956-3482
jabernathy@freedomfoundation.com
estahlfeld@freedomfoundation.com

DATED this 10th day of December 2018.



Dmitri Iglitzin, WSBA No. 17673
Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
SCHWERIN CAMPBELL BARNARD
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berger@workerlaw.com

Attorneys for Defendant SEIU 775

NOTICE OF DISCRETIONARY REVIEW - 2
CASE NO. 18-2-00454-34

LAW OFFICES OF
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(206) 285-2828

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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

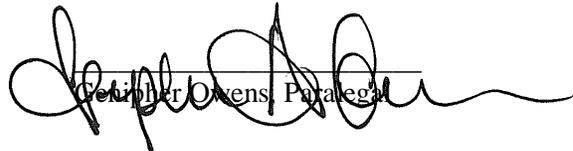
Eric R. Stahlfeld
EStahlfeld@freedomfoundation.com

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

DECLARATION OF SERVICE
CASE NO. 18-2-00454-34

LAW OFFICES OF
SCHWERIN CAMPBELL
BARNARD IGLITZIN & LAVITT LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98119-3971
(206) 285-2828

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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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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: <u>November 9, 2018</u> 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

JX

v.

SERVICE EMPLOYEES INTERNATIONAL UNION 775, et al.,

Defendants.

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



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 *Daniel Benjamin Berger*

DTG
JD

The Court having considered the following:

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

No. 18-2-00454-34
[PROPOSED] ORDER DENYING MOTION

FREEDOM FOUNDATION
P.O. Box 552, Olympia, WA 98507
P: 360.956.3482 | F: 360.352.1874

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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:~~

DI
JD

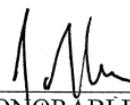
_____ ;
_____ ;

- 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.

JD
DI



THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

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Presented by:



Eric R. Stahlfeld, WSBA #22002
ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

Approved as to Form by:



DMITRI IGLITZIN, WSBA #17673
ATTORNEY FOR DEFENDANT



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2018 Wash. Legis. Serv. Ch. 304 (S.H.B. 2938) (WEST),

West's Revised Code of Washington Annotated

Title 42. Public Officers and Agencies (Refs & Annos)

Chapter 42.17A. Campaign Disclosure and Contribution (Refs & Annos)

Enforcement

West's RCWA 42.17A.765

42.17A.765. Enforcement

Effective: January 1, 2012

[Currentness](#)

(1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in [RCW 42.17A.750](#).

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general or the prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

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

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

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

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

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

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

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

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington.

Credits

[[2010 c 204 § 1004](#), eff. Jan. 1, 2012; [2007 c 455 § 1](#), eff. July 22, 2007; 1975 1st ex.s. c 294 § 27; 1973 c 1 § 40 (Initiative Measure No. 276, approved November 7, 1972). Formerly [RCW 42.17.400](#).]

[Notes of Decisions \(30\)](#)

West's RCWA 42.17A.765, WA ST 42.17A.765

The statutes are current with Chapters 1 to 3, 48, 81, 89, 92, 94, 102, 131, and 133 of the 2018 Regular Session of the Washington legislature.

SEIU 775

Constitution and Bylaws

As adopted and ratified by the Founding Convention of SEIU 775, held on January 11, 2004 and approved by SEIU on February 27, 2004, and as amended

- **at the February 27, 2005 Convention;**
- **at the January 15, 2006 Convention;**
- **by a vote of the membership on November 16, 2006;**
- **at the February 19, 2007 Convention;**
- **by a vote of the membership on January 30, 2008;**
- **at the September 15, 2008 Convention;**
- **at the September 11, 2010 Convention;**
- **at the September 11, 2011 Convention;**
- **at the September 8, 2012 Convention;**
- **at the September 7, 2013 Convention;**
- **at the September 6, 2016 Convention;**
- **at the November 26, 2014 Convention;**
- **at the September 16, 2016 Convention; and**
- **by a vote of the membership on May 8, 2018 and approved by SEIU on May 31, 2018.**

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CONSTITUTION AND BYLAWS OF SEIU 775

Article 1 – Name, Charter, Jurisdiction, Mission, Vision and Goals

1.1 Name. This Union shall be known as SEIU 775 (“the Union,”), unless a change in name is directed by the International Union.

1.2 Charter and Jurisdiction. In order to form a democratic organization in which to unite workers and build a stronger and more united voice to meet the challenges that affect us, our patients, residents, clients, consumers, communities, and our profession, a Union has been established by order of the International Executive Board and chartered in accordance with Article XIV of the Constitution of the Service Employees International Union, on December 13, 2002. This Union shall have jurisdiction to organize workers in any jurisdiction as granted and approved by the International Union in accordance with the International Constitution and Bylaws.

1.3 Mission. Our mission is to unite the strength of all working people and their families, to improve their lives and lead the way to a more just and humane world.

1.4 Vision. We are motivated by our vision of a future:

- Where caregivers and all workers live free from poverty.
- Where healthcare is a right, not a privilege. Where those who depend on long term care services are valued as human beings and assured of quality affordable care.
- Where all workers and their families live and work in dignity, are respected and have the opportunity to develop their talents and skills.
- Where the strength of our members leads the way in uniting all working people and making the American Dream a reality for everyone.

1.5 Goals. Our goals are to:

- 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.

1.6 Strategies to Achieve Our Goals. We will achieve these goals with the following strategies -

1. Build worker leadership and activism.
2. Help workers form unions and other powerful organizations.

3. Hold politicians accountable.
4. Bargain strong contracts and provide quality services and benefits.
5. Advance pro-worker policy through influencing government, industry, and public opinion.
6. Build strategic partnerships.
7. Govern the Union democratically and use our resources responsibly.
8. Adapt. Innovate. Create.

Article 2 – Membership

2.1 Regular Membership. A regular member is any individual employed in a bargaining unit for which the Union is the recognized bargaining agent for matters relating to wages, hours and other term and conditions of employment, any health care worker covered by a service agreement between SEIU 775 and another SEIU Union, or any union officer or employee of SEIU 775 who is not represented for the purposes of collective bargaining by another Union.

By action of the Executive Board of SEIU 775, the following individuals may be admitted to regular membership: persons employed by the Union's benefit funds and other Union-sponsored organizations, any worker who is actively engaged in an organizing campaign seeking recognition for SEIU 775 as the exclusive bargaining representative, and officers or employees of SEIU International.

2.2 Associate Membership. Associate Membership is open to other persons who support the mission, vision and values of SEIU 775. Associate members shall enjoy all rights and bear all responsibilities outlined in this Constitution and Bylaws, except that they may not run for or hold elected union office, vote in union elections or vote on referenda of any kind, or file charges before a trial body, and may be suspended or expelled from membership by vote of the Executive Board without appeal. Associate members may attend and, when recognized by the Chair, participate in Union meetings as observers. The Executive Board may deny associate membership requests.

2.3 Other categories of membership. The Executive Board may designate other categories of membership so long as they are in accordance with the International Constitution.

2.4 Membership in Good Standing. In order to exercise the rights and privileges of union membership, members of the Union shall maintain their membership in good standing by remittance payment of full monthly dues, assessments and/or any other payments owed (either directly, through the employer, or through an agent of the employer, of the member, or of the Union) prior to the last business day of each month following the month for which the dues are being paid (e.g., prior to the last business day of July for June dues). If the employer or agent cannot calculate and/or transmit the amount of dues owed by the end of the month following the month for which the dues are being paid, the member will not lose good standing if the dues are remitted prior to the last business day of the first month in which they can be calculated and/or transmitted (e.g., if the amount of dues owed for June cannot be calculated in July, but can be calculated in

August, the member will not lose good standing if the June dues are remitted prior to the last business day in August).

Members who are temporarily out of work due to lay-off by their employer may retain their membership in good standing by remittance payment of at least the minimum dues set by the International Union Constitution and Bylaws by the last business day of each month. Members who are out of work for longer than six full months shall no longer be eligible for Regular Membership under Article 2.1 of this Constitution and Bylaws, but, beginning the seventh calendar month from their lay-off, shall remain eligible for Associate Membership under the terms and conditions of Article 2.2, above, provided that they continue to pay the monthly dues required by Article 3.3 of this Constitution and Bylaws.

All members of the Union are under a positive duty to see that their dues, assessments and/or any other payments owed are remitted on or before the last day of the month in which the same are due at the main or designated office of the Union. A member's signed authorization allowing an employer or an agent to calculate and remit dues, constitutes compliance with this requirement.

The failure of a steward, representative, or any officer of the Union to appear or to collect the dues, assessments and/or any other payments owed shall not in any manner excuse the member from his or her obligations to pay his or her obligation on or before the due date at the main or designated office of the Union.

A member who is not in good standing at the time the Union determines eligibility to vote or be elected to office in a union election shall not be unreasonably denied the right to vote if, through no fault of the worker, he or she has lost good standing because his or her employer or the agent designated by the Union or the member to do so has failed to deduct and transmit dues to the Union.

2.5 Suspension from and Readmission to membership. Any member failing to pay dues, assessments and/or any other payments owed to the Union on or before the last business day of the month in which the same are due, shall stand automatically suspended from membership in this Union, and from all rights and privileges of such membership.

Any suspended member may be readmitted to membership upon payment of back and current obligations, but in no event shall such readmission restore any privileges or benefits.

Any member who fails to pay dues, assessments and/or any other payments owed because he or she is not working and is suspended for such non-payment shall be readmitted without payment, but in no event shall such readmission restore any privileges or benefits.

A suspended member who is readmitted to membership shall, from the date of such readmission be considered the same as a new member.

2.6 Nondiscrimination. There shall be no discrimination against any member, or any applicant for membership by reason of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age, or disability.

2.7 Membership duties and obligations. Every member, by virtue of his or her membership in this Union is obligated to adhere to and follow the terms of the International Constitution, this Constitution, and the working rules promulgated in accordance with this Constitution, with respect to his or her rights, duties, privileges and immunities conferred by them and by statute. Each member shall faithfully carry out such duties and obligations and shall not interfere with the rights of fellow members.

2.8 Authorization to act as exclusive bargaining representative. Every member, by virtue of his or her membership in this Union, authorizes this Union to act as his or her exclusive bargaining representative with full and exclusive power to execute agreements with his or her employer governing terms and conditions of employment, to determine the method for ratification or rejection of collective bargaining agreements, to determine the method for authorization of a strike or job action and to act for him or her and have final authority in presenting, processing, and adjusting any grievance, difficulty, or dispute arising under any collective bargaining agreement or out of his or her employment with such employer, in such manner as this Union or its officers deem to be in the best interests of this Union. This Union and its officers, representatives, and agents may decline to process any such grievance, complaint, difficulty, or dispute, if in their discretion and judgment such grievance, complaint, or dispute lacks merit.

2.9 Authorization to select and direct agent for collection of dues. Every member whose employment is not governed by the National Labor Relations Act, by virtue of his or her membership in this Union, authorizes the Union to enter an agreement with an entity to act as the agent of the member for purposes of making voluntary dues deductions in the event that the employer ceases making dues deductions and to pay the entity for its role as the members' agent. Every such member authorizes the entity designated by the Union to serve as his or her agent for purposes of deducting and remitting membership dues. Every such member further authorizes the entity designated by the Union to serve as his or her agent for purposes of deducting and remitting SEIU COPE and other voluntary deductions to SEIU 775 pursuant to the authorizations contained in the member's membership card.

The Union will notify the entity of members' decisions to designate it as the agent of the member for purposes of dues deductions. At all times, each member retains the right to terminate his or her agency relationship with the entity designated by the Union by providing the Union with thirty (30) days' advance written notice of his or her desire to terminate the agency relationship. If the member terminates the agency relationship, the Union will notify the entity of the member's decision to terminate. For the period the entity designated by the Union serves as his or her agent, the member will work directly through SEIU 775 to direct the agent and authorizes the agent to work directly through SEIU 775 to facilitate any and all aspects of the agent's relationship with the member, which shall include but not be limited to having SEIU 775 represent the member and his or her interests during any dispute resolution concerning any claim that may arise between the member and the agent, including full settlement of any such claim. The agent designated by the Union shall not serve as the agent of members for any purpose other than deducting membership dues and other voluntary deductions, and remitting those dues and deductions to the Union.

In the event that the Union designates an entity to act as the agent for purposes of deducting dues, every member whose employment is not governed by the National Labor Relations Act, by virtue of

his or her membership in this Union, acknowledges that the entity designated may also serve as the employer's agent for purposes of performing payroll, tax withholdings, and other functions, but does not serve as the agent of the employer for purposes of making or sending membership dues deductions to the Union.

2.10 Dual Unionism. No member shall engage in dual unionism or espouse dual unionism or disaffiliation, or shall slander or libel this Union, its members, or its officers, and shall not be a party to any activity to discourage membership in or the payment of dues to the Union or secure the disestablishment of this Union as the collective bargaining agent for any employee.

2.11 Bill of Union Member Rights and Responsibilities in the Union.

- The right to have opinions heard and respected, to be informed of Union activity, to be educated in union values and union skills.
- The right to choose the leaders of the Union in a fair and democratic manner.
- The right to a full accounting of Union dues and the proper stewardship over Union resources.
- The right to participate in the Union's bargaining efforts and to reject or to approve collective bargaining agreements.
- The right to have members' concerns resolved in a fair and expeditious manner.
- The responsibility to help build a strong and more effective labor movement, to support the organizing of unorganized workers, to help build a political voice for working people, and to stand up for one's co-workers and all workers.
- The responsibility to be informed about the internal governance of the Union and to participate in the conduct of the Union's affairs.
- The responsibility to contribute to the support of the Union.
- The responsibility to treat all workers and members fairly.
- The responsibility to offer constructive criticism of the Union.

2.12 Fines, Penalties, and Expulsion. No regular member of this Union shall be fined, penalized, or permanently expelled from membership except as a result of charges and penalties determined pursuant to Article 12 of this Constitution and Bylaws.

Article 3 – Dues and Revenues

3.1 Revenues. The revenues of this Union shall be derived from monthly dues, fees, fines and assessments, agency shop or service or fair share fees, associate member dues, and such other sources as may be approved by the Executive Board.

3.2 Dues Increases. Any increase in the rate of dues or the levying of any general or special assessment, which have not been mandated by a Convention of the International Union or by the Constitution and Bylaws of the International Union, shall be enacted by a vote of the membership according to applicable laws and according to any requirements of the International Union.

3.3 Dues Rates. * Except as specified herein, the monthly dues rate shall be 3.0% of the member's gross pay. The minimum dues rate for regular members who work forty (40) hours or more in any given month, associate members, and members who are out of work due to lay-off shall be \$24, or the minimum set by the International Union Constitution and Bylaws, whichever is greater. Minimum dues shall increase if mandated by the International Union Constitution and Bylaws.

3.4 Dues Rates – Exceptions. The following shall be exceptions to the dues rates specified in 3.3, above:

1. Members covered by a servicing agreement between the Union and another union and who pay dues to that union shall have satisfied their dues obligation to this Union.

2. For members of bargaining units transferring representation from another union to SEIU 775 after January 1, 2006, dues shall be the rate then current for the union from which the bargaining unit transferred at the time the transfer took place. The full SEIU 775 dues rate shall not go into effect for each transferring bargaining unit until members of that bargaining unit have voted the current SEIU 775 dues rate in accordance with this Constitution and Bylaws and applicable provisions of law and the International Union Constitution and Bylaws.

3. For good cause, the Executive Board is authorized and empowered to establish lower dues rates, assessments and/or other payments for employees in a bargaining unit until such a time as it deems advisable.

3.5 Per Capita Tax. This Union shall pay per capita tax to the International Union for any person from whom the Union receives revenue, whether called dues or otherwise. This Union shall likewise pay any other obligations due to the International Union, and it shall have no right to pay any bills before it pays its full obligations to the International Union each month, unless a waiver of such obligations is obtained from the International Union. This Union shall affiliate with such SEIU State Councils, and other SEIU intermediate bodies as the International Union may direct.

3.6 Financial Records. All records of this Union pertaining to income, disbursements and financial transactions of any kind whatsoever must be kept for a period of at least six (6) years, or longer if required by applicable law.

3.7 Trading upon name of union prohibited without permission of International Union. Neither this Union nor any subdivision thereof, nor members or groups of members, including councils, conferences, leagues, clubs or any association composed of members of this Union, or subdivision thereof, shall in any manner, directly or indirectly, use, exploit or trade upon the name of the International Union, or affiliated body, or this Union, or any similar name or designation, nor in the name of the International Union, or affiliated body, nor in the name of this Union, levy or collect any

*[2018 Editor's Note] Per Section 3.2 of the SEIU 775 Constitution and Bylaws, by a 2012 vote of the membership, the standard monthly dues rate for Washington Home and Community Based Care Workers was set at 3.2%. The Constitutional Dues Rate remains at 3% for all others unless reduced by the SEIU 775 Executive Board for good cause under Section 3.4.3. Per Article XV, section 6(a), of the SEIU Constitution and Bylaws, effective January 1, 2018, the minimum monthly dues rate is \$33.00 and, until 2020, will increase annually each year by one dollar.

taxes, dues, or other moneys, nor in the name of the International Union, or affiliated body, nor in the name of this Union, conduct any affair or any other activity, for the purpose of raising funds, including programs or soliciting advertising in any publication, either directly or indirectly, without first obtaining written permission from the President of the International Union.

All of the aforesaid matters covered by this section, including without limitation, funds, solicitations, gifts and donations, collected in the name of the International Union, shall at all times be subject to audit by the International Union, and all books, records, and documents pertaining to matters covered by this section shall be available for inspection, copying and audit by the International Union.

Article 4 – Union Officers

4.1 Officers. The officers of the Union shall consist of one (1) President, one (1) Secretary-Treasurer, two (2) Vice Presidents, and thirty-three (33) Executive Board Members At-Large. The President, Secretary-Treasurer, Vice Presidents, and Executive Board Members At-Large shall constitute the Executive Board, which shall have thirty-seven (37) members.

4.2 Terms of Office. For officers elected by regular election under the provisions of Article 6 of this Constitution and Bylaws, their term of office shall begin thirty (30) calendar days from the date of their election and they shall hold office, effective for the term of office beginning in October 2015, for three (3) years or until their successors are duly elected and sworn in. For officers appointed by the President and confirmed by the Executive Board to fill mid-term vacancies, their term of office shall begin immediately and they shall hold office for the remainder of the term of office for which they were appointed and confirmed as successor, or until their successors are duly elected and sworn in. No person shall hold the same single office of President, Secretary-Treasurer, or Vice President for more than fifteen (15) years, beginning with his or her first complete term of office. Effective for the term of office beginning in October 2015, no person shall hold the office of Executive Board Member At-Large for more than fifteen (15) years.

4.3 Eligibility to Serve. Only regular members in good standing are eligible to be nominated for office, elected to office, or hold office in this Union. If at any time during the term of office, an officer ceases to be a regular member in good standing, the office they hold shall be declared vacant.

4.4 Successorship. In the event that the office of the President becomes vacant during the President's term of office, the Secretary-Treasurer shall automatically succeed to and assume the office of President. The Secretary-Treasurer shall serve in this capacity for a period of not longer than thirty (30) days during which time the Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. The new President shall assume office immediately and shall hold office for the remainder of the original term of office. In the event of a vacancy in the office of the Secretary-Treasurer, it shall be the duty of the President, in addition to his or her other duties, to assume the duties of the Secretary-Treasurer. The President shall serve in this capacity for a period of not longer than sixty (60) days during which time the Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. In the event that the position of any other officer becomes vacant during the term of office, the President shall appoint a replacement for the remainder of the term of office, subject to confirmation by the Executive Board.

4.5 President. The President is the Chief Executive Officer of this Union, and is, for that reason, invested with broad powers to conduct all of the affairs of the Union. The President shall have the following duties, powers, rights, privileges, and limitations thereupon:

1. To serve as the chief executive officer of this organization and to supervise, conduct and control all of the business and affairs of this organization and its officers and employees, departments, functions and programs, and to delegate duties as needed.
2. To serve as a voting member of the Executive Board, and to discharge each of the duties and responsibilities of that body. Failure to attend a regular meeting of the Executive Board without notifying the Secretary-Treasurer as to the reason(s) before the meeting and obtaining approval for the absence by vote of the Executive Board constitutes an unexcused absence. Resignation is considered automatically tendered at the third unexcused absence during the term of office.
3. To serve as the representative of SEIU 775 in any and all dealings and business affairs, including but not limited to collective bargaining negotiations, and dealings with employers, other unions, the federal, state and governments, vendors, contractors, consultants, employees, public and private agencies and all others.
4. To have sole authority to employ, hire, direct, supervise, discipline and discharge such staff, counsel, accountants, consultants, vendors and contractors as he or she deems necessary or advisable to be employed by the Union for the purposes of carrying out the vision, mission, strategies and programs of the Union and to fix their compensation.
5. To assign additional duties to the Secretary-Treasurer, Vice Presidents, and Executive Board Members At-Large as he or she may deem necessary.
6. To negotiate, enter into, and sign all agreements, including collective bargaining agreements.
7. To decide, determine and take charge of all labor, industrial relations and employment relations matters relating to collective bargaining agreements, labor and employment law, and the enforcement thereof, including but not limited to the administration of grievances, mediations, arbitrations, and litigation.
8. To decide, determine, and take charge of all legislative, public policy and political positions and actions of the Union, without limitation, and to establish, maintain, direct, and administer all political funds, political action committees, and other political or legislative accounts.
9. To decide, determine, authorize and make all expenditures and disbursements, and to sign all checks on behalf of the Union; to authorize and direct the administration of all revenue, deposits and income of this Union; to propose an annual budget plan to the Executive Board for adoption, rejection, amendment or modification; to administer the annual budget adopted by the Executive Board and any funds or accounts created thereby; to obtain loans, make loans, and enter into loan agreements consistent with the annual budget adopted by the Executive Board.
10. To call meetings of the members of the Union, including the annual Convention, Executive Board, other committees, chapters, caucuses, or divisions, and to preside over all such meetings, and to vote on all questions.
11. To enlist members in the work of building the Union, including appointing members to and removing members from committees, chapters, caucuses, or divisions created by the Executive Board.

12. To determine the method for appointing and removing Advocates.
13. To serve by virtue of the office as the first delegate to all conventions and meetings to which the Union is entitled to delegate representation.
14. To determine participation in insurance and other benefit plans, and to appoint and remove all trustees to any training, welfare, pension or other funds negotiated by the Union.
15. To determine affiliation with other labor bodies external to SEIU and to appoint and remove delegates to which such affiliation may entitle the Union.
16. To interpret and enforce the International Union Constitution and Bylaws and this Constitution and Bylaws.
17. To determine voting procedures and membership eligible to vote to changes in dues rates, adopt bargaining demands, to authorize strikes, and to ratify or reject collective bargaining agreements.
18. To determine methods, timeline and voting procedures by which elections will be held for delegates to the SEIU convention additional to those delegates directly named or determined by this Constitution and Bylaws, and to determine methods, timeline and voting procedures for the election of delegates to other organizations, intermediary bodies, councils and conventions not otherwise determined by this Constitution and Bylaws or appointed by the President under this Constitution and Bylaws.
19. To fill vacancies in any other Union office by appointment should such offices fall vacant between regular elections of officers as provided in the Constitution and Bylaws, subject to confirmation or rejection by the Executive Board.
20. To formulate plans and programs for this Union.
21. To appoint an Ethics Liaison.
22. To appoint an Elections Chair and an Elections Committee.
23. To take all other action not inconsistent with this Constitution and Bylaws that he or she deems reasonable, necessary, appropriate, or convenient in order to achieve the goals and objectives of this Union. This includes the establishment or revocation of rules, regulations, policies, and procedures, subject to approval, modification or rejection by the Executive Department.
24. The President shall be a full-time officer and shall be paid a salary and receive employment benefits set by the Executive Board at least annually.
25. The President shall be reimbursed for out-of-pocket expenses incurred on behalf of the Union, according to policies set by the Executive Board.

4.6 Secretary-Treasurer. The Secretary-Treasurer shall have the following duties, powers, rights, privileges, and limitations thereupon:

1. To serve as the second principal officer of the Union, with responsibilities for maintaining the books and records of the Union.
2. To perform such other duties as assigned by the President.
3. To serve as a voting member of the Executive Board, and to discharge each of the duties and responsibilities of that body. Failure to attend a regular meeting of the Executive Board without notifying the President as to the reason(s) before the meeting and obtaining approval for the absence by vote of the Executive Board constitutes an unexcused absence. Resignation is considered automatically tendered at the third unexcused absence during the term of office.

4. To notify the International Union of the names and addresses (with zip code) of all officers elected to office within fifteen (15) days after the election.
5. To send to the International Union an accurate record of all dues payments and other revenue when required.
6. To send to the Secretary-Treasurer of the International Union and to any state council with which the Union is affiliated the correct names and addresses of all members, and of all other persons from whom revenue is derived. The proper zip code shall be included for each address. When available, e-mail addresses, social security numbers, and telephone numbers shall be included.
7. To promptly forward to the International Secretary-Treasurer copies of all annual audit reports and copies of all financial reports setting forth a statement of assets and liabilities and a statement of receipts and disbursements which are required by law. And to forward to the International Secretary-Treasurer, by April 1 of each year, information and supporting documentation showing the average gross wage rate of its membership for the previous calendar year.
8. To be authorized to counter-sign checks and other binding legal instruments on behalf of the Union.
9. To preside at meetings and otherwise perform the duties of the President in the President's absence or incapacity.
10. To serve by virtue of office as the second delegate to SEIU conventions and meetings to which the Union is entitled to delegate representation.
11. The Secretary-Treasurer shall not be disqualified from also serving as an appointed Union employee, subject to the exercise of the President's sole and exclusive discretionary powers and authority outlined in Article 4.5.4 of this Constitution and Bylaws.
12. The Secretary-Treasurer shall be reimbursed for approved out-of-pocket expenses incurred on behalf of the Union, according to policies set by the Executive Board.

4.7 Vice Presidents. The Vice Presidents shall have the following duties, powers, rights, privileges, and limitations thereupon:

1. To serve as the third and fourth principal officers of the Union, with responsibilities to assist the President in the performance of his or her duties.
2. To perform such other duties as assigned by the President.
3. To serve as voting members of the Executive Board, and to discharge each of the duties and responsibilities of those bodies. Failure to attend a regular meeting of the Executive Board without notifying the President as to the reason(s) before the meeting and obtaining approval for the absence by vote of the Executive Board constitutes an unexcused absence. Resignation is considered automatically tendered at the third unexcused absence during the term of office.
4. To be authorized to counter-sign checks and other binding legal instruments on behalf of the Union.
5. To serve by virtue of office as the third and fourth delegates to SEIU conventions and meetings to which the Union is entitled to delegate representation.
6. The Vice Presidents shall not be disqualified from also serving as an appointed union employee, subject to the exercise of the President's sole and exclusive discretionary powers outlined in Article 4.5.4 of this Constitution and Bylaws.

7. The Vice Presidents shall be reimbursed for approved out-of-pocket expenses incurred on behalf of the Union, according to policies set by the Executive Board.

4.8 Executive Board Members At-Large. The Executive Board Members At-Large shall have the following duties, powers, rights, privileges, and limitations thereupon:

1. To perform such duties as assigned by the President.
2. To serve as voting members of the Executive Board, and to discharge each of the duties and responsibilities of that body. Failure to attend a regular meeting of the Executive Board without notifying the President as to the reason(s) before the meeting and obtaining approval for the absence by vote of the Executive Board constitutes an unexcused absence. Resignation from the Executive Board is considered automatically tendered at the third unexcused absence during the term of office.
3. In order to guarantee the rank-and-file voice of the Executive Board, and in order to avoid potential, actual or perceived conflicts of interest, Executive Board Members At-Large are prohibited from serving as regular full time or part time appointed Union employees during their term of office, except that any Executive Board member may work for the Union for no more than two-hundred and seventy days as a temporary or “lost-time” employee during his or her term of office, providing that the voting rights of the Member At-Large on the Executive Board are suspended during the period of his or her temporary or “lost-time” employment. The Executive Board may extend this period of time by a vote of two-thirds. If any Executive Board Member At-Large seeks or accepts employment as a full time or part time regular appointed Union employee during their term of office, he or she will be deemed to have resigned his or her position as Executive Board Member At-Large whether or not that Executive Board Member At-Large is hired by the Union.
4. Executive Board Members At-Large, by virtue of their office, shall serve as the fifth through thirty-seventh delegates to SEIU conventions and meetings to which the Union is entitled to delegate representation.
5. The Executive Board Members At-Large shall be reimbursed for approved out-of-pocket expenses incurred on behalf of the Union, according to policies set by the Executive Board.

Article 5 – Executive Board

5.1 Composition. The Executive Board shall be composed of thirty-seven (37) members, which shall include the President, the Secretary-Treasurer, the Vice Presidents, and thirty-three (33) Executive Board Members At-Large.

5.2 Meetings. The Executive Board shall hold regular meetings at least once every three months without other notice than this by-law at such regular times and places as shall be designated by the President. The Executive Board shall hold other meetings at such time and place as shall be determined by the President. All necessary expenses for such meetings shall be paid by the Union. Minutes of Executive Board meetings shall be recorded and presented in writing at the next regular Executive Board meeting. The Executive Board may meet in executive session to discuss and decide questions or matters relating to budgetary matters, personnel action or policies, matters relating to real estate and other investments, matters relating to litigation or for other good cause as may be determined by a majority vote of the Executive Board. All meetings of the Executive Board shall be

conducted in accordance with Robert's Rules of Order, subject to modifications by the Executive Board.

5.3 Action by other means. At the call of the President, the Executive Board may act by letter, telephone, facsimile, electronic mail, videoconference, or other appropriate means of communication. Such action so taken on vote of the majority of the Executive Board shall constitute official action of the Executive Board. A record shall be kept of any such action taken, which shall be presented in writing at the next regular Executive Board meeting.

5.4 Quorum and Agenda. A majority of the seated members of the Executive Board shall constitute a quorum for the transaction of its business. The President shall cause an agenda to be prepared for each meeting of the Executive Board. The Executive Board may add to, subtract from, or restructure that agenda by a majority vote.

5.5 Authority. The Executive Board shall have each of the following duties, powers, rights, privileges, and limitations thereupon:

1. To adopt an annual budget and to create such funds and accounts as may be necessary for the administration and operation of such budgets, subject to the reasonable discretionary administration and adjustments that the President may make in order to carry out the intent of the Executive Board in adopting and creating such budgets, accounts and funds.
2. To invest and reinvest the funds of the Union in such property, real or personal, tangible or intangible, as it shall consider prudent, necessary, and desirable in the interest of the Union and its members; to lease, purchase or otherwise acquire in lawful manner any real estate, or the rights and privileges thereto; to sell, lease, rent, or dispose of real or personal property, rights or privileges belonging to the Union; to create and issue deeds, mortgages, trust agreements, contracts & negotiable instruments secured by mortgage or other instrument. These provisions shall not be interpreted so as to limit the rights and privileges of the President or of his or her designees to purchase, lease, mortgage, sell or rent or to otherwise acquire or dispose of miscellaneous property or items necessary, in the President's sole and exclusive judgment, to carry out the day-to-day activities of the Union, such as office equipment and machinery, supplies, computers, phone equipment, and other miscellaneous property necessary for the day-to-day functioning of the Union.
3. To create health, welfare, benefit, pension, and other trusts, the primary purpose of which is to provide benefits for the members or their beneficiaries, and to terminate and effectuate the same.
4. To commission an audit and examination of the books and financial records of the Union by an independent Certified Public Accountant at least annually, which shall take inventory of and verify the securities, investments, bank accounts, real and intangible property, and cash funds then on hand; to see that the funds of this Union are deposited in one or more reliable banks; to recommend such measures as will simplify the duties of the Secretary-Treasurer; and to take other actions not inconsistent with this Constitution and Bylaws, the International Union Constitution and Bylaws, or the law as are necessary to safeguard the funds, property and assets of this Union.
5. To review and approve as to form, legality, and constitutionality all referenda, Constitutional Amendments, and other matters to be voted on by the general membership;

to decide and publish at its discretion endorsement of or opposition to such matters; and to express and issue opinions regarding such matters.

6. To propose amendments to this Constitution and Bylaws and to determine whether such proposed amendments shall be voted upon at a Convention of the Union or by mail ballot election.
7. To establish standing committees, ad-hoc committees, chapters, caucuses, divisions and other subdivisions of this Union.
8. To vote to confirm or reject the President's appointments to fill vacancies among the officers.
9. To receive and act upon reports of the officers.
10. To approve or reject strike authorization.
11. To serve as the trial body specified under Article 12 of this Constitution and Bylaws and under Article XVII of the International Union Constitution and Bylaws (or any successor article).
12. To initiate, defend, compromise, settle, arbitrate, release or pay the expenses and costs of any legal proceedings or actions of any nature in its judgment necessary or desirable to protect, preserve, defend or advance the interests of the Union and/or its members. This provision shall not be interpreted so as to limit the rights and responsibilities of the President with regard to the negotiation or enforcement of collective bargaining agreements.
13. To set the compensation of the President on at least an annual basis.
14. To take all other action not inconsistent with this Constitution and Bylaws that it deems reasonable, necessary, appropriate, or convenient in order to achieve the goals and objectives of this Union, including the establishment or revocation of rules, regulations, policies, and procedures, and to approve, modify or reject rules, regulations, policies and procedures enacted by the President.
15. To delegate any of its above powers and duties to the President or his or her designee if and when it deems such delegation reasonable, necessary, appropriate, or convenient in order to achieve the goals and objectives of this union.

Article 6 - Union Officer Elections

6.1 Time of Elections. Elections shall be held every three years on a date set by the President during the first week of September. No later than January 15 of each election year, the President shall determine the specific date of the election for that year.

6.2 Elections Committee. The President shall, exercising his or her sole and complete discretion not subject to ratification or confirmation by the Executive Board, appoint an Elections Chair, who shall be a member-in-good-standing and who is not, nor shall be eligible in the term of office following his or her appointment by the President, a candidate for elected office. Except in the event of resignation or incapacity, the Elections Chair shall not be removed or replaced less than ninety (90) days prior to any election for Union Office. No later than ninety (90) days prior to any election for Union Office, the President shall, exercising his or her sole and complete discretion not subject to ratification or confirmation by the Executive Board, appoint an Elections Committee, which shall consist of members-in-good-standing who are not, nor shall be eligible in the term of office following their appointment by the President, candidates for elected office. The Elections

Committee shall take charge of all matters concerning the conduct of the election, and shall enjoy reasonable discretionary authority therein including nominations, determination of eligibility, and all other matters addressed in Article 6 of this Constitution and Bylaws, subject to the requirements of the International Union's Constitution and Bylaws and applicable laws. The Election Committee shall meet as necessary to conduct its business and shall have final say and determination over all matters concerning the conduct of nominations and the election, subject to such appeals as are outlined in this Constitution and Bylaws.

6.3 Notice of nominations process. The Elections Committee shall send to all members in good standing a notice of upcoming elections and nominations process no later than eighty (80) days before the Election, including the number of signatures for nomination under the provisions of Article 6.5.

6.4 Petitions. The Elections Committee shall publish a standard petition for use by all candidates for office and shall make it available to candidates no later than seventy-five (75) days before the Election. Each petition shall contain space for nominating candidates to each of the thirty-seven offices in the Union. A list of candidates or prospective candidates who have requested nominating petitions shall be made available to members in good standing by the Election Committee upon request.

6.5 Nominations. Nominations shall be by a standard written nominating petition published by the Elections Committee that designates the name of the nominee and the office and carries the signature of the nominee indicating his or her willingness to be nominated. Nominating petitions must be submitted to the Elections Committee no later than forty-five (45) days before the Election. Only the signatures of members who are in good standing at the time the Elections Committee verifies signatures shall be considered valid. Signatures need not be secured personally by the nominee. Members may be nominated for only one office and any member who seeks nomination to more than one office shall be deemed ineligible to appear on the ballot for any office. The number of valid signatures required to nominate a candidate for office shall be twenty-five (25). The Elections Committee shall establish procedures for verifying signatures and shall complete the verification of signatures no later than forty-three (43) days before the Election. The Elections Committee shall inform each candidate in writing regarding whether or not he or she has qualified to appear on the ballot. Write-in candidacies are not permitted.

6.6 Eligibility. Only regular members in good standing are eligible to be nominated for, elected to, or hold office in this union. No person who has been convicted of a felony as defined in Section 504 of the Landrum-Griffin Act shall be eligible to hold office in this Union. No member may be a candidate for more than one office at a time. No person shall be eligible to be nominated for or hold office who has not been a member in good standing continuously for six (6) months, unless waived by the International President for good cause shown.

6.7 Conduct of the Election. Ballots shall be mailed out to all members in good standing no later than three (3) weeks before the election. In the event only one (1) candidate is nominated for any office, only that candidate's name shall appear on the ballot for that office. Ballots must be received at the Post Office box designated by the Elections Committee by the close of the Post Office on Election Day. The Elections Committee may prescribe the order of candidates on the ballot,

consistent with legal requirements, including but not limited to, allowing the identification of candidates with a slate.

For the offices of President and Secretary-Treasurer, the candidates receiving the highest number of votes shall be declared elected. For the office of Vice President, the two candidates receiving the highest number of votes shall be declared elected. For the offices of Executive Board Members At-Large, the thirty-three (33) candidates receiving the highest number of votes shall be declared elected.

The Elections Committee shall set forth a set of detailed balloting procedures no later than thirty (30) days before the Election.

6.8 Non-discrimination, fairness, ethics, and campaign finances. The Union shall not discriminate against any candidate. Any information made available to one candidate will be made available to other candidates upon request.

No later than forty-five (45) days before the Election, the Elections Committee shall adopt a code of ethics and conduct for candidates and the conduct of the Election that shall be consistent with the code of ethics and conduct, this Constitution and Bylaws, the International Union's Constitution and Bylaws, and applicable laws. During the course of the Election, the Elections Committee may affirmatively remedy violations of the code of ethics and conduct, the SEIU 775 and SEIU Constitution and Bylaws, and applicable laws in order to ensure a fair election.

No candidates (including a prospective candidate) for any office or in this Union or affiliated body or supporters of a candidate may solicit or accept financial support of any kind from any non-member of the International Union.

Candidates or prospective candidates for office in this Union must report any and all contributions, financial support, and in-kind donations they receive to the Elections Chair within seven (7) days of having received such contribution, other financial support, or donations. This includes the expenditure of aggregate personal funds by the candidate for his or her own campaign in excess of one hundred (100) dollars. Candidates must report the amount received (or the fair market value of an in-kind donation); the name, complete address and SEIU Union membership affiliation of each donor; and the date the contribution, other financial support or donation was received. These campaign finance reports shall be retained by the Election Chair for one (1) year following the election, and shall be available for inspection by any member upon reasonable request. The Elections Committee may require candidates to produce documents and other evidence regarding direct and indirect contributions to their campaigns. The Elections Committee may also establish individual contribution limits for each candidate of no less than five hundred (500) dollars.

6.9 Appeals and Complaints of Elections and Elections Procedures. Members in good standing wishing to protest any aspect of the conduct of the election shall file a signed, written statement with the Elections Committee describing the alleged irregularity within fifteen (15) days of the end of the Election. The Elections Committee shall consider such protest and issue a written decision within seven (7) days of receiving the protest. The decision shall be mailed, certified, return receipt requested, to the member having filed the protest on the same day that it is issued. Any member

aggrieved by a decision of the Elections Committee may appeal that decision to SEIU 775's Executive Board within 5 days of the decision. Any member aggrieved by the Executive Board's decision on her or his election protest may appeal to the International President within 15 days of the Executive Board's decision, in accordance with Article VIII, Section 2 of the International Union Constitutional and Bylaws.

Article 7 – Local and International Convention and Membership Meetings

7.1 SEIU 775 Constitutional Convention and Leadership Conference. The Union shall hold a Constitutional Convention for the purpose of transacting legal, constitutional and other business of SEIU 775 at least every two years on a time and date and at a place determined by the President. All members of SEIU 775 in good standing shall be entitled to attend and vote at the Constitutional Convention. Notice of the Constitutional Convention shall be mailed to all members in good standing at their last known address no later than fifty (50) days prior to the Constitutional Convention. The proceedings of the Constitutional Convention shall be conducted in accordance with Robert's Rules of Order, subject to modifications by the Executive Board.

During calendar years when no Constitutional Convention is held, the Union shall hold a Leadership Conference for the purpose of leadership development, training, coordination and planning. Leadership conferences may address any subject matter not requiring a vote of the full membership.

7.2 Delegates to the SEIU Convention. The Executive Board shall determine the number of delegates and alternates who shall represent the Union at the SEIU convention. Executive Board members shall be deemed, by virtue of their election, elected as delegates to the SEIU, and any other conventions, conferences, councils and bodies to which this Union is entitled to send delegates. If it shall appear that the number of elected union officers is less than the number of delegates which the Union has decided to send to the convention, then arrangements shall be made for nomination and secret ballot election, if required, of an additional number of eligible members as convention delegates. Nominees for such positions, if unopposed, shall be deemed elected without necessity for further procedures. If the total number of elected officers is greater than the number that the Local Union is permitted to send to the convention, the President shall be the first delegate, the Secretary-Treasurer shall be the second delegate, and the Vice President shall be the third delegate. The remaining SEIU Delegates shall be chosen from among the Executive Board in order of each Board Member's cumulative length of service on the Executive Board. Where the length of service between one or more Board Members is equal, the Delegate(s) shall be chosen by lot from among those sharing the same level of seniority.

7.3 Membership meetings. There shall be regular membership meetings by chapter, worksite, or geography as directed by the President.

Article 8 – Collective Bargaining and Representation

8.1 Determination of Bargaining Demands. The President shall determine the method for approving bargaining demands. Voting procedures shall be determined by the President or an officer or representative designated by the President.

8.2 Authorizing Strikes. Strike authorization shall be determined by a majority vote of those participating, at a meeting or meetings of the members of the directly impacted bargaining unit(s), or alternatively by mail ballot, and shall thereafter be approved by a vote of the Executive Board. Voting procedures shall be determined by the President or an officer or representative designated by the President. The International President shall be notified prior to the beginning of any strike, or, when prior notice is not practicable, as soon as possible after the commencement of the strike.

8.3 Ratifying Contracts. Contracts shall be ratified by a majority vote of those participating, at a meeting or meetings of the members of the directly impacted bargaining unit(s), or alternatively by mail ballot. Voting procedures shall be determined by the President or an officer or representative designated by the President. A record shall be kept of the ratification vote, which shall be presented in writing at the next regular Executive Board meeting along with the ratified contract.

8.4 Advocates. The President shall determine the method for appointing and removing advocates. Advocates who are removed may appeal their removal under the provisions of Article 12.

Article 9 – Dissolution

This Union cannot dissolve, secede or disaffiliate while there are seven (7) dissenting members. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of this Union shall become the property of the International Union. The International Union shall be notified by registered or certified mail of any meeting scheduled by this Union for the purpose of taking a vote on dissolution, secession, or disaffiliation from the International Union at least sixty (60) days prior to the date of such scheduled meeting, and a representative of the International Union shall be afforded an opportunity to speak at such meeting. The International President shall direct whether the membership vote shall be conducted by secret ballot at a membership meeting and/or by mail referendum, and, if appropriate, a separate method by which dissenting Local Unions or members may assert their dissent. The vote shall be counted by an independent neutral party. Under no circumstances shall this Union distribute its funds, assets, or properties individually among its membership.

Article 10 - Property Rights

The title to all property, funds, and other assets of this Union shall at all times be vested in the Executive Board for the joint use of the membership of this Union, but no member shall have any severable proprietary right, title, or interest therein.

Membership in this organization shall not vest any member with any right, title, or interest in or to the property of this Union, including the funds of this Union.

Article 11 – International Constitution and Bylaws

The Constitution and Bylaws of this Union shall at all times be subordinate to the International Constitution and Bylaws, as it may be amended. If any conflict should arise between the Constitution and Bylaws of this Union, or any amendments thereto, and the International Union

Constitution and Bylaws, or any amendments thereto, then the provisions of the International Union Constitution and Bylaws shall control.

This Constitution and Bylaws for SEIU 775, and any amendments thereto, shall be forwarded to the SEIU International President for approval, and shall be filed with other bodies as required by federal, state or other applicable law. No amendments to this Constitution and Bylaws shall be in effect until approved by the SEIU International President.

Article 12 – Trials and Appeals

Trials and Appeals of this Union, its officers and its members shall be conducted according to Article XVII of the SEIU International Constitution and Bylaws, Trials and Appeals, (or any successor Article), with the specific limitation that any officer or member who is bringing a charge or accusation or any member accused or charged may select a member of this Union, but not an attorney under any circumstances, to represent him or her in the presentation of a defense.

Article 13 – Protection against personal, union suits

In the event a suit is brought against the Union or any of its officers or employees, funds of the Union may be expended to the extent permitted by law for all legal costs, including attorney's fees, court costs and investigative expenses, in the defense of such lawsuit. In the event any officer or employee of the Union is held personally liable, either by way of judgment, compromise or settlement arising out of a lawsuit against such officer or employee regarding the performance of duties on behalf of the Union, the funds of the Union may be expended to satisfy such judgment, compromise or settlement to the extent permitted by law.

Article 14 – Bonding

The Union shall secure and maintain surety bonds in the amounts and the form required by applicable statutes. The International Secretary-Treasurer may direct an increase in the amount of any bond whenever he or she deems it necessary.

Article 15 – Savings Clause

If any provision of this Constitution and Bylaws shall be modified or declared invalid or inoperative by any competent authority of the executive, judicial, or administrative branch of federal or state government, the Executive Board shall have the authority to suspend the operation of such provision during the period of its invalidity or modification and to substitute in its place and stead a provision that will meet the objections to its validity and that will be in accord with the intent and purposes of the invalid or modified provisions. If any article or section of this Constitution and Bylaws should be modified or held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution and Bylaws or the application of such article or section to persons or circumstances other than those as to which it has been held invalid or modified shall not be affected thereby.

Article 16 – Amendments

16.1 Methods to amend. Amendments to this Constitution and Bylaws may be made by majority vote at a Convention of the Union, or by mail ballot vote, as determined by the Executive Board.

16.2 Amendments at Convention. Any regular member in good standing may submit proposed amendments in writing to the Secretary-Treasurer no later than thirty (30) days prior to a scheduled Convention. The Secretary-Treasurer shall present these to the Executive Board at its next regularly scheduled meeting. If there is no regularly scheduled meeting prior to the Convention, a meeting shall be called for the purpose of considering proposed amendments. The Executive Board may submit such proposed amendments directly to the floor of the Convention or may refer them to a Committee for review and recommendations. The Executive Board may also author proposed amendments and submit them directly to the floor of the Convention or may refer them to a Committee for review and recommendations. The President shall determine voting procedures in accordance with this Constitution and Bylaws and applicable laws.

16.3 Amendments by mail ballot. Voting on amendments which, in the Executive Board's sole discretion, require urgent action prior to the next regularly scheduled Convention, may be conducted by a mail ballot election. The President shall determine voting procedures in accordance with this Constitution and Bylaws and applicable laws.

APPENDIX A

Approved by the SEIU International Executive Board, June 13, 2009

Approved by the SEIU International Executive Board as revised, January 21, 2016

SEIU CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

PART A: PREAMBLE

The Service Employees International Union (SEIU) believes in the dignity and worth of all workers. We have dedicated ourselves to improving the lives of workers and their families and to creating a more just and humane society. We are committed to pursuing justice for all, and in particular to bringing economic and social justice to those most exploited in our community. To achieve our mission, we must develop highly trained and motivated leaders at every level of the Union who reflect the membership in all of its diversity.

Union members place tremendous trust in their leaders. SEIU elected officers and managers owe not just fiduciary obligations to union members; given the moral purpose of our mission, SEIU leaders owe members the highest level of ethical behavior in the exercise of all leadership decisions and financial dealings on members' behalf. Members have a right to proper stewardship over union funds and transparency in the expenditure of union dues. Misuse and inappropriate use of resources or leadership authority undermine the confidence members have in the Union and weaken it. Corruption in all forms will not be tolerated in SEIU. This *Code of Ethics and Conflict of Interest Policy* (the "Code" or "SEIU Code") strengthens the Union's ethics rules of conduct, organizational practices and enforcement standards and thus enhances the Union's ability to accomplish its important mission.

We recognize that no code of ethics can prevent some individuals from violating ethical standards of behavior. We also know that the SEIU Code is not sufficient in itself to sustain an ethical culture throughout the Union. To accomplish the goals for which this Code has been created, we must establish systems of accountability for all elected leaders and staff. These systems must include appropriate checks and balances and internal operating procedures that minimize the opportunity for misuse or abuse, as well as the perception of either, in spending union funds and exercising decision-making authority. The systems also must include adequate provision for training on understanding and implementing this Code. More broadly, we emphasize the importance of the range of standards, practices, and values described in "A Strong Ethical Culture," Section A of the *SEIU Policies on Ethics and Standards* that were enacted with the Code in 2009.

In particular, SEIU is committed to providing meaningful paths for member involvement and participation in our Union. The SEIU Member Bill of Rights and Responsibilities in the Union is a significant source of SEIU members' rights and obligations. Its exclusive enforcement through the procedures set forth in Article XVII of the SEIU Constitution and Bylaws reflects a commitment to the democratic principles that have always governed SEIU. Article XVII's numerous protections against arbitrary or unlawful discipline of members also form an essential ingredient of the democratic life of the Union. Similarly, the requirement that Affiliates provide for regular meetings of the membership, set forth in Article XV, Section 5 of the Constitution, is another important element in the democratic functioning of SEIU. Finally, the provisions against discrimination and harassment on the basis of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age and disability contained in Article III, Section 4 of the SEIU Constitution and in the Constitutions and Bylaws of Affiliates, the SEIU Anti-discrimination and Anti-Harassment Policy and Procedure, and similar policies of Affiliates forbid conduct in violation of SEIU's historic belief that our strength comes from our unity and diversity and that we must not be divided by forces of discrimination.

Individuals subject to this Code are expected to comply with State and Federal laws, the Constitution and Bylaws of SEIU and Affiliates, and the anti-discrimination and anti-harassment policies of SEIU and Affiliates as part and parcel of our commitment to sustaining an ethical culture and the highest standards of conduct throughout the Union. Violations of these laws and policies are ethical breaches; however, these violations should be addressed through avenues provided by the applicable laws and policies and not through the Code unless they also allege violations of this Code. In particular, the sole enforcement mechanism for matters covered by the SEIU or Affiliate Constitutions and Bylaws is that which is set forth in those documents, unless violations of this Code are also alleged. Finally, grievances that arise under collective bargaining agreements are excluded from enforcement under this Code unless they also allege violations of this Code.

The scope and standards of this Code are set forth in the following Sections.

SECTION 1. *Applicability to International Union.* The SEIU Code is henceforth applicable in its entirety to all officers, executive board members and employees of SEIU. These individuals are referred to herein as "covered individuals." SEIU shall append or attach the Code in its entirety to its Constitution and Bylaws in its next and all future publications.

SECTION 2. *Applicability to SEIU Affiliates.* By enactment of the SEIU International Executive Board, the SEIU Code is applicable in its entirety to all officers, executive board members and employees of all affiliated bodies and local unions chartered by SEIU ("Affiliates" herein). These individuals are referred to herein as "covered individuals."

- (a) Each Affiliate shall ensure that the Code extends to all employees as soon as practicable but in no event later than the end of 2020.

- (b) Each Affiliate shall append or attach the Code in its entirety to its Constitution and Bylaws at its next and all future publications.
- (c) Wherever reference herein is made to SEIU or an SEIU program, department or position, the corresponding reference is to the particular Affiliate or its equivalent program, department or position.
- (d) Each Affiliate is responsible for enforcing the Code and educating its covered individuals on the Code in a manner consistent with the Code's terms, subject to assistance and oversight from SEIU.
- (e) The Code is not intended to restrain any Affiliate from adopting higher standards and best practices, subject to the approval of the SEIU Ethics Ombudsperson.

PART B: GENERAL OBLIGATIONS

SECTION 3. *Obligations of Covered Individuals.*

- (a) *Commitment to the Code.* SEIU and each Affiliate shall provide a copy of the Code to each covered individual. It is the duty and obligation of covered individuals to acknowledge annually that they have received a copy of this Code, that they have reviewed and understand it, and that they agree to comply with it.
- (b) *Duty of disclosure.* Covered individuals shall disclose to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison, described in PART F of this Code, any conflict of interest or appearance of a conflict, which arises when their paramount duty to the interest of members is potentially compromised by a competing interest, including but not limited to an interest, relationship or transaction referenced in this Code. Actual, perceived and potential conflicts should be disclosed at the time that covered individuals become aware of them.
- (c) *Disqualification from service to SEIU or Affiliate.* No person shall serve as an officer or managerial employee of SEIU or any Affiliate who has been convicted of any felony involving the infliction of grievous bodily injury, or the abuse or misuse of such person's position or employment in a labor organization to seek or obtain illegal gain at the expense of the members, except for the limited exceptions set forth in applicable federal law.

PART C: BUSINESS AND FINANCIAL ACTIVITIES

SECTION 4. *General Duty to Protect Members' Funds; Members' Right to Examine Records.*

- (a) The assets and funds of a labor organization are held in trust for the benefit of the membership. Members are entitled to assurance that those assets and funds are expended for proper and appropriate purposes. The Union shall conduct its proprietary functions, including all contracts for purchase or sale or for the provision of significant services, in a manner consistent with this Code. All officers, executive board members and employees of SEIU and SEIU Affiliates, whether elected or appointed, have a trust and high fiduciary duty to honestly and faithfully serve the best interests of the membership.
- (b) Consistent with Section 201 of the Labor-Management Reporting and Disclosure Act, SEIU shall permit a member for just cause to examine any books, records and accounts necessary to verify SEIU's annual financial report under that section to the U.S. Department of Labor.
- (c) Affiliates comprised solely of members employed by government bodies shall permit a member to examine its financial report submitted to a state agency and, consistent with state law and for just cause, to examine any books, records and accounts necessary to verify the Affiliate's financial report.

SECTION 5. *Prohibited Financial Interests and Transactions.* Covered individuals shall not, to the best of their knowledge, have a substantial ownership or financial interest that conflicts with their fiduciary duty.

- (a) For purposes of these rules, a "substantial ownership or financial interest" is one which either contributes significantly to the individual's financial well-being or which enables the individual to significantly affect or influence the course of the business entity's decision-making.
- (b) A "substantial ownership or financial interest" does not include stock in a purchase plan, profit-sharing plan, employee stock ownership plan (ESOP) or blind trust. Nor does it prohibit covered individuals from owning, through a mutual fund or other similar investment vehicle, the publicly traded shares of any employer with which SEIU or an Affiliate engages in collective bargaining or does business or which SEIU or an Affiliate seeks to organize, provided that all transactions affecting such interests are consistent with rates and terms established by the open market.
- (c) It is not permissible for any covered individual to:

- (1) Knowingly have a substantial ownership or financial interest in any entity that engages in collective bargaining with SEIU or any of its Affiliates;
 - (2) Make or attempt to influence or participate in any way in a decision concerning the relations of SEIU or an Affiliate with a vendor, firm or other entity or individual in which the covered individual or his or her relative, spouse or business partner has a substantial ownership or financial interest; or
 - (3) Engage in any self-dealing transactions with SEIU or any of its Affiliates, such as buying property from or selling property to SEIU, without the informed approval of the International Secretary-Treasurer (or Affiliate Secretary-Treasurer, as applicable), obtained after full disclosure, including an independent appraisal of the fair market value of the property to be bought or sold.
- (d) To ensure compliance with this Section, covered individuals are required to disclose any interests, transactions or interests covered by this Section in accordance with Section 3(b) of this Code.

SECTION 6. *Payments and Gifts from Employers, Vendors and Members.*

- (a) Covered individuals shall not knowingly accept any payments, benefits or gifts of more than minimal financial value under the circumstances presented from any employer that engages or seeks to engage in collective bargaining with SEIU or an Affiliate, or from any business or professional firm that does business or seeks to do business with SEIU or an Affiliate.
 - (1) This Section does not extend to payments and benefits that are provided to covered individuals by prohibited employers as compensation for their primary and regular employment.
 - (2) This Section does not extend to work and services that covered individuals perform for prohibited employers or businesses on a part-time basis, through an arm's length transaction and for normal and customary pay for such work or services.
 - (3) This Section does not extend to participation in events hosted by public officials involving discussion of public policy matters.
 - (4) With respect to perishable items that are more than minimal but that are impracticable to return, such as food, it shall be considered compliance with this Section to discard such an item or place it in a common area for members and office staff to enjoy. If the gift is discarded or enjoyed communally, it is recommended that the giver should be advised of this

disposition to dispel the appearance of any conflict of interest on the part of any covered individual and to discourage recurrence.

- (b) Covered individuals shall not knowingly accept personal payments or gifts from any member, absent a personal relationship independent of the relationship between the Union and the member, other than a gift of minimal financial value. This provision does not apply to contributions to campaigns for union office made in accordance with the SEIU Constitution and Bylaws.

SECTION 7. *Conversion of Union Funds and Property.* Covered individuals shall not use, convert or divert any funds or other property belonging to SEIU to such individual's personal benefit or advantage.

SECTION 8. *Applicability to Third Parties.* The principles of this Code apply to those investments and activities of third parties that amount to a subterfuge to conceal the financial interests of SEIU officers or employees or to circumvent the standards of this Code.

SECTION 9. *Certain Loans Prohibited.* SEIU shall not make loans to any officer or employee, or to any of their family members, that at any time exceed \$2,000 in total indebtedness on the part of such officer, employee or family member.

PART D: BENEFIT FUNDS AND RELATED ORGANIZATIONS

SECTION 10. *Obligations of Covered Individuals.*

- (a) *Benefit Funds.*

- (1) For purposes of this Section:

- a. A "benefit fund or plan" means a retirement, health or welfare benefit fund or plan sponsored by SEIU or an Affiliate, or in which SEIU or an Affiliate participates.
- b. The definition of "substantial ownership or financial interest" provided in Section 5 applies.

- (2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the administration of a benefit fund or plan shall not:

- a. Have any substantial financial interest in, or any compromising personal ties to, any investment manager, insurance carrier, broker, consultant or other firm or individual doing business or seeking to do business with the fund or plan;

- b. Accept any personal payment from any business or professional firm that does business or seeks to do business with the fund or plan, other than contractual payment for work performed; or
 - c. Receive compensation of any kind for service as an employee representative or labor-designated trustee for a fund or plan, except for reimbursement of reasonable expenses properly and actually incurred and provided uniformly to such representatives or trustees, with the proviso that it is not a violation of this provision for an officer or managerial employee who is not a full-time employee of SEIU or an Affiliate to be a lawfully paid employee of a fund or plan if such employment is consistent with applicable legal restrictions and fully disclosed through appropriate reports.
- (3) To ensure compliance with this Section, all covered individuals shall disclose any interests, transactions or relationships covered by this Section in accordance with Section 3(b) of this Code.
 - (4) No person shall serve in a fiduciary capacity or exercise responsibilities in the administration of a benefit fund or plan who has been convicted of any felony involving the infliction of grievous bodily injury or the abuse or misuse of such person's position or employment in an employee benefit plan to seek or obtain an illegal gain at the expense of the beneficiaries of the employee benefit fund or plan, except for the limited exceptions set forth in applicable federal law.

(b) Related Organizations.

- (1) For purposes of this Section, an organization "related to" SEIU or an Affiliate means an organization
 - in which 25 percent or more of the members of the governing board are officers or employees of SEIU or an Affiliate, or
 - for which 50 percent or more of its funding is provided by SEIU or an Affiliate.
- (2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the administration of an organization related to SEIU shall comply with the provisions and shall hold themselves to the standards of the SEIU Code while they are acting for or on behalf of the related organization.

PART E: FAMILY AND PERSONAL RELATIONSHIPS

SECTION 11. *Purpose of Rules Governing Family and Personal Relationships.* SEIU does not prohibit the employment of qualified relatives of current officers or employees, or of individuals with whom an officer or employee has a romantic or intimate personal relationship. SEIU also does not prohibit the retention of qualified vendors that employ relatives of current SEIU officers or employees or individuals with whom an officer or employee has a personal relationship.

However, SEIU recognizes that the existence of such relationships can lead to problems, including favoritism or the appearance of favoritism toward relatives or those who are involved in a personal relationship. Giving these individuals special treatment – or creating the impression that they receive special treatment – is inconsistent with our principles of stewardship and accountability and with our duty to responsibly conduct the business of SEIU. The provisions of this PART are designed to ensure that family or personal relationships do not influence professional interactions between the employees involved and other officers, employees and third parties.

SECTION 12. *Definitions.* For purposes of this PART:

- (a) “Relative” means parent, spouse, spousal equivalent, daughter, son, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, first or second cousin, corresponding in-law, “step” relation, foster parent, foster child, and any member of the employee’s household. Domestic partner relatives are covered to the same extent as spousal relatives.
- (b) “Personal relationship” means an ongoing romantic or intimate personal relationship that can include, but is not limited to, dating, living together or being a partner or significant other. This definition applies regardless of gender, gender identification, or sexual orientation of the individuals in the relationship. This restriction does not extend to friends, acquaintances or former colleagues who are not otherwise encompassed in the scope of “personal relationships.”

SECTION 13. *Prohibited Conduct.* The following general principles will apply:

- (a) Applications for employment by relatives and those who have a personal relationship with a covered individual will be evaluated on the same qualification standards used to assess other applicants. Transmission to the appropriate hiring authority of applications on behalf of individuals who have a family or personal relationship shall not in itself constitute an attempt to influence hiring decisions. Further input into the application process, however, may be deemed improper.
- (b) Covered individuals will not make hiring decisions about their relatives or persons with whom they have a personal relationship, or attempt to influence hiring decisions made by others.

- (c) Supervisory employees shall not directly supervise a relative or a person with whom they have a personal relationship. In the absence of a direct reporting or supervisor-to-subordinate relationship, relatives or employees who have a family or personal relationship generally are permitted to work in the same department, provided that there are no particular operational difficulties.
- (d) Covered individuals shall not make work-related decisions, or participate in or provide input into work-related decisions made by others, involving relatives or employees with whom they have a personal relationship, even if they do not directly supervise that individual. Prohibited decisions include, but are not limited to, decisions about hiring, wages, hours, benefits, assignments, evaluations, training, discipline, promotions, and transfers.
- (e) To ensure compliance with this Section, all covered individuals must disclose to the Ethics Ombudsperson or the Affiliate Ethics Liaison, as appropriate, any relationships covered by this Section in accordance with Section 3(b) of this Code.

PART F: ENFORCEMENT

SECTION 14. *Ethics Officer.* The office of the Ethics Officer is established to provide independent assistance to SEIU in the implementation and enforcement of the Code. The Ethics Officer shall be an individual of unimpeachable integrity and reputation, preferably with experience in ethics, law enforcement and the workings of the labor movement. The Ethics Officer shall provide his or her services under contract and shall not be an employee of the International Union or any of its Affiliates. The Ethics Officer shall be appointed by the International President and confirmed by the International Executive Board. The International President, the International Secretary-Treasurer, and the SEIU International Executive Board may refer matters concerning the Code to the Ethics Officer for review and/or advice, consistent with Sections 22 and 23.

SECTION 15. *Ethics Ombudsperson.* The office of SEIU Ethics Ombudsperson is established to oversee implementation and enforcement of the Code and ongoing efforts to strengthen the ethical culture throughout the Union. The Ethics Ombudsperson is responsible for providing assistance to the International Union and Affiliates on questions and concerns relating to the Code and ethical culture; directing the training of SEIU and Affiliate officers and staff concerning the Code and ethical culture; responding to ethics concerns and complaints consistent with Sections 17-23; receiving and resolving disclosures of conflicts of interest; assisting the Ethics Officer; and providing other support as necessary to the overall SEIU ethics program. The Ethics Ombudsperson, in consultation with the Ethics Officer, shall issue a report to the SEIU International Executive Board annually, summarizing compliance, training, enforcement, culture building and related activities, and making recommendations for modifications to the ethics program that he or she believes would enhance the program's effectiveness. The

Ethics Ombudsperson may also conduct periodic reviews for the purposes of monitoring compliance with this Code and determining whether partnerships, joint ventures, and arrangements with management organizations conform to this Code, are properly recorded, reflect reasonable investment or payment for goods and services, further SEIU's tax-exempt purposes, and do not result in inurement, impermissible private benefit, or excess benefit transactions. The Ethics Ombudsperson shall be employed in the SEIU Legal Department.

SECTION 16. *Affiliate Ethics Liaison.* Each Affiliate shall appoint an Ethics Liaison who will be available for ethics advice or guidance, will serve as an Affiliate's key contact with the International's Ethics Ombudsperson, will assist in enforcement of the Code, will oversee the delivery of ethics-related training, will assist the Affiliate in strengthening its ethical culture, and will serve as an ethical leader in the Affiliate.

- (a) Presidents, chief executive officers, secretary-treasurers, chief financial officers, chiefs of staff, and the equivalent of any of the foregoing are not eligible to serve as Ethics Liaisons.
- (b) Affiliates are encouraged to consider rotating the Ethics Liaison position periodically, barring operational difficulties, to develop ethical leadership broadly in the Affiliate. Affiliates shall advise the SEIU Ethics Ombudsperson as soon as practicable of the appointment of Ethics Liaisons and of any vacancy that occurs in the position.
- (c) Ethics Liaisons will regularly receive training from the International Union specific to the role. Affiliates should make every effort to ensure the participation of their Ethics Liaisons.

SECTION 17. *Complaints.*

- (a) Any covered individual or member may file a written complaint concerning alleged violations of the Code. Oral concerns and complaints shall be reduced to writing for further processing as a complaint. Complaints should be signed or contain the name of the complainant(s), and shall be kept confidential pursuant to Section 24. Complaints alleging violation of the Code shall not be enforced under SEIU or Affiliate constitutions and bylaws unless they also allege violations of the constitutions and bylaws.
- (b) The International Union shall post contact information for submission of ethics complaints on the SEIU website and shall provide that information on request.
- (c) Each Affiliate shall provide its staff and membership with contact information for its Ethics Liaison.

SECTION 18. *Complaints Handled by the International Union.* Complaints alleging violation of the Code that are submitted to the International Union or the Ethics Officer

shall be referred initially to the SEIU Ethics Ombudsperson. The Ethics Ombudsperson shall review ethics complaints submitted to the International Union and shall respond to them in his or her discretion, including but not limited to providing advice or guidance, resolving them informally, directing them to resources outside the ethics office, and referring them to the Ethics Officer or Affiliate for further processing. The individual submitting the complaint shall be notified of the status of the complaint as appropriate in the discretion of the Ethics Ombudsperson but in all events upon its conclusion.

SECTION 19. *Complaints Handled by Affiliate; Notice to Ethics Ombudsperson.*

Ethics complaints that are raised with or referred to an Affiliate shall be investigated by the affected Affiliate and, where appropriate, may form the basis of employee discipline or formal internal union charges to be processed before a trial body in accordance with the requirements set forth in the Affiliate's constitution and bylaws and/or the SEIU Constitution and Bylaws. The Ethics Ombudsperson may advise an Affiliate concerning matters related to the investigation and processing of complaints and charges alleging violation of the Code. Where a complaint involves an Affiliate's president, chief executive officer, chief of staff, secretary-treasurer, chief financial officer, or the equivalent, the Affiliate shall notify the Ethics Ombudsperson as soon as practicable. The Ethics Ombudsperson may consult with the Ethics Officer concerning any question referred by an Affiliate.

SECTION 20. *Failure to Cooperate; Bad Faith Complaints.* Unreasonable failure by a covered individual to fully cooperate with a proceeding or investigation involving an ethics complaint or alleged violation of this Code shall constitute an independent violation of this Code. SEIU reserves the right, subject to notice, investigation and due process, to discipline persons who make bad faith, knowingly false, harassing or malicious complaints, reports or inquiries.

SECTION 21. *Original Jurisdiction.*

- (a) *Requests for Original Jurisdiction.* If an Affiliate or an Affiliate executive board member, officer, or member believes that formal internal union charges against a covered individual that also allege violations of this Code involve a situation which may seriously jeopardize the interests of the Affiliate or the International Union, or that the hearing procedure of the Affiliate will not completely protect the interests of the Affiliate, an officer or member, that individual may request that the International President assume original jurisdiction under Article XVII, Section 2(f) of the SEIU Constitution and Bylaws.
- (b) *Assumption of Original Jurisdiction by International President.* In accordance with Article XVII, Section 2(f) of the SEIU Constitution and Bylaws, the International President may in his or her discretion assume original jurisdiction of formal internal union charges also alleging violation of this Code if as a result of an investigation he or she believes that the charges filed against a covered individual involve a situation which may seriously jeopardize the interests of the

Affiliate or the International Union. In his or her discretion, the International President may refer the matter to the Ethics Officer for a recommendation concerning the possible assumption of original jurisdiction.

SECTION 22. *Referral of Formal Charges to Ethics Officer.* If formal internal union charges filed with the International Union under Article XVII, Section 3 of the SEIU Constitution and Bylaws also allege violation of the Code by an officer or executive board member of the International Union or an Affiliate, such charges may be referred to the Ethics Officer for review and recommendations.

SECTION 23. *Review of Claims by Ethics Officer.*

- (a) If after review of the allegations of violations of the Code in a complaint or formal charge, the Ethics Officer finds that the allegations have merit and/or warrant further investigation, he shall recommend a response or course of action for the International Union to respond to the complaint or charges, including but not limited to the following:
 - (1) Further investigation by SEIU personnel and/or outside investigator(s);
 - (2) Filing of formal charges under Article XVII of the SEIU Constitution and Bylaws;
 - (3) Assumption of original jurisdiction by International President pursuant to Article XVII, Section 2(f) of the SEIU Constitution and Bylaws;
 - (4) Appointment of an outside hearing officer to conduct a trial under Article XVII, Section 3 of the SEIU Constitution and Bylaws;
 - (5) Discipline of covered employees;
 - (6) Sanction of covered officers or members accused in formal proceedings, and
 - (7) Other action deemed appropriate in the discretion of the Ethics Officer.
- (b) If the Ethics Officer concludes, after review of allegations of violations of the Code, that the allegations are without merit or that further investigation is not necessary, he or she shall advise the International Union of his or her findings.

PART G: PROTECTION OF WHISTLEBLOWERS

SECTION 24. *Confidentiality.* SEIU will make all reasonable efforts to keep confidential the identity of any person(s) raising an ethics concern, inquiry, report or complaint under the Code unless disclosure is authorized by the complainant or is required for SEIU to carry out its fiduciary or legal duties. SEIU will also treat

communications concerning ethics complaints or concerns with as much confidentiality and discretion as possible, provided that it remains able to conduct a complete and fair investigation, carry out its fiduciary and legal duties, and review its operations as necessary.

SECTION 25. *No Retaliation.* SEIU encourages all officers and employees to bring ethics concerns and complaints that the Code has been violated to the attention of the Union, as set forth more fully in PART F above.

- (a) SEIU expressly prohibits retaliation against covered individuals and members for:
 - (1) Making good faith complaints, reports or inquiries pursuant to this Code;
 - (2) Opposing any practice prohibited by the Code;
 - (3) Providing evidence, testimony or information relative to, or otherwise cooperating with, any investigation or enforcement process of the Code; and
 - (4) Otherwise participating in the enforcement process set forth in PART F above.
- (b) In particular, SEIU will not tolerate any form of retaliation against Affiliate Ethics Liaisons for performing their responsibilities.
- (c) Any act of alleged retaliation should be reported to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison immediately and will be responded to promptly.

SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT

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