FILED
SUPREME COURT
STATE OF WASHINGTON
8/30/2019 1:32 PM
BY SUSAN L. CARLSON
CLERK

Rule 13.5 (review of Court of Appeals interlocutory decision)
No: 52726-0-II

Supreme Court Case No: 97604-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SEIU 775,
Petitioner

v.

FREEDOM FOUNDATION,
Respondent

PETITIONER SEIU 775's MOTION FOR DISCRETIONARY REVIEW

Dmitri Iglitzin, WSBA No. 17673
Darin M. Dalmat, WSBA No. 51384
Benjamin Berger, WSBA No. 52909

Attorneys for Petitioner SEIU 775

BARNARD IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY OF MOVING PARTY 2

III. STATEMENT OF RELIEF SOUGHT 2

IV. RELEVANT FACTS 3

V. GROUNDS FOR RELIEF AND ARGUMENT 6

A. STANDARD OF REVIEW ON A MOTION FOR DISCRETIONARY REVIEW. 6

B. DISCRETIONARY REVIEW IS APPROPRIATE BECAUSE THE COURT HAS ALREADY ACCEPTED DIRECT REVIEW OF THE LEGAL ISSUE IN DISPUTE. 7

C. THE COURT OF APPEALS COMMITTED OBVIOUS OR PROBABLE ERROR BY FAILING TO CORRECT THE ERRONEOUS HOLDING THAT THE FOUNDATION COULD BRING THIS SUIT MORE THAN TEN DAYS AFTER THE STATE OFFICERS' FAILURE TO INITIATE ENFORCEMENT ACTIONS. 8

1. The statute's plain language requires a citizen complainant to promise to file suit "within ten days" of the state officers' failure to act. 8

(i) the "action" to be brought within 10 days is the citizen's. 9

(ii) the citizen's window is triggered by the state officers' "failure" to file an enforcement action within their own 10-day window. 11

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. 13

D. THE TRIAL COURT AND COURT OF APPEALS' RULINGS RAISE THE SPECTER OF A USELESS LAWSUIT. 17

E. THE TRIAL COURT RULING SUBSTANTIALLY LIMITS SEIU 775'S FREEDOM TO ACT. 19

VI. CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Abbenante v. Giampietro,
75 R.I. 349, 66 A.2d 501 (R.I. 1949) 15

Beverly Health & Rehab. Servs., Inc. v. N.L.R.B.,
317 F.3d 316 (D.C. Cir. 2003) 15

Centr. Puget Sound Reg. Transit Auth. v. WR-SRI 120th N. LLC,
191 Wn.2d 223, 422 P.3d 891 (2018) 7

Douchette v. Bethel Sch. Distr. No. 403,
117 Wn.2d 805, 818 P.2d 1362 (1991) 18

Entrepreneur, Ltd. v. Yasuna,
498 A.2d 1151 (D.C. 1985) 15, 16

State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n ("EFF"),
111 Wn. App. 586, 49 P.3d 894 (2002) 10, 11

Eyman v. Wyman,
191 Wn.2d 581, 424 P.3d 1183 (2018) 9

Flowers v. Carville,
310 F.3d 1118 (9th Cir. 2002) 9

Freedom Found. v. Teamsters Local 117, et al.,
Case No. 97109-9.....1, 2, 7

Hartley v. State,
103 Wn.2d 768, 698 P.2d 77 (1985) 17

Kilian v. Atkinson,
147 Wn.2d 16, 50 P.3d 638 (2002) 10

Shannon v. State,
110 Wn. App. 366, 40 P.3d 1200 (2002) 18

State v. Contreras,
124 Wn.2d 741, 880 P.2d 1000 (1994) 14

Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n,
141 Wn.2d 245, 4 P.3d 808 (2000) 20

West v. Wash. State Ass'n of Dist. & Mun. Court Judges,
190 Wn. App. 931, 361 P.3d 210 (2015) 8

Statutes

29 U.S.C. § 626(e) 13

33 U.S.C. § 1319(g)(6)(b)(ii) 13

42 U.S.C. § 2000e-5(f)(1) 13

Clean Water Act 13

Fair Compaign Practices Act/FCPA ..... *passim*

National Labor Relations Act/NLRA 15

RCW 42.17.765(4)(a)(ii) 9

RCW 42.17A.765 ..... 1, 5

RCW 42.17A.765(4) 8, 16

RCW 42.17A.765(4)(a) 8, 10

RCW 42.17A.765(4)(a)(i) 8

RCW 42.17A.765(4)(a)(ii) ..... *passim*

RCW 42.17A.765(4)(a)(iii) 9, 12

RCW 42.17A.765(4)(a)(iv) 1

Other Authorities

First Amendment 20

RAP 2.3(b) 1

RAP 2.3(b)(2) 20

RAP 2.3(b)(2)'s.....20

RAP 13.3.....6

RAP 13.3(a)(2)(i).....6

RAP 13.3(a)(2) and 13.5.....2

RAP 13.5.....7

RAP 13.5(b) 7

RAP 13.5(b)(1) 17

RAP 13.5(b)(2) 20

RAP 13.5(b)'s 7

I. INTRODUCTION

This case turns on the proper construction of the citizen suit provisions contained in *former* RCW 42.17A.765.[1] This Court recently accepted direct review of that issue in two other cases, consolidated as *Freedom Foundation v. Teamsters Local 117*, No. 97109-9. As with those cases, a dispositive question in this action is whether the 10-day rule established under that provision bars the respondent's citizen suit.

In the proceedings below, the superior court patently erred in construing this provision. And while the Commissioner of this Court recognized that the trial court *may* have erred, she incorrectly held that the error was not sufficiently obvious to meet the requirements of RAP 2.3(b). The Court of Appeals did not address this error. As a result, SEIU 775 asks this Court to accept discretionary review, consolidate this case with the pending *Local 117* case, and properly construe the statute.

The Court's 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

[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 App. at 153.

prospective action, not to any enforcement action of the officers. 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, 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? SEIU 775 shows below that under traditional canons of construction and common law waiver rules reneging parties are precluded from suit. Because the trial court committed obvious or probable error on this issue, and the Court of Appeals Commissioner contradicted herself in addressing this error, discretionary review should be granted. Discretionary review will also promote judicial efficiency insofar as the Court will be reviewing precisely this question in the consolidated *Local 117* action.

II. IDENTITY OF MOVING PARTY

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

III. STATEMENT OF RELIEF SOUGHT

SEIU 775 seeks an order from this Court pursuant to RAP 13.3(a)(2) and 13.5 granting discretionary review of Division II of the

Court of Appeals' August 1, 2019, order denying SEIU 775's Motion to Modify the Commissioner's Ruling.

IV. RELEVANT FACTS[2]

Petitioner SEIU 775 is a labor organization that represents long-term care workers; its mission is to unite the strength of all working people and their families, improve their lives, and lead the way to a more just and humane world. App. 157. The Foundation holds itself out as a Washington nonprofit organization. *Id.*, at 34 ¶ 6.

On December 14, 2016, the Foundation submitted a letter and notice to the Washington Attorney General and relevant county prosecutors (together, the "State officers") alleging that SEIU 775 was a political committee within the meaning of the FCPA and had 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. These 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. The PDC found that SEIU 775 was not a "political committee" under the FCPA because it was not a "receiver of contributions" in support of, or opposition to, candidates or ballot propositions, nor did it "expend

[2] The statement of facts related to events before the Foundation filed its complaint are drawn from the Foundation's Amended Complaint.

contributions" towards electoral political activities as one of its primary purposes. *Id*., at 10. On the same date, the Foundation 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. As a result, neither the Attorney General nor any county prosecutor initiated an enforcement action against SEIU 775 on these allegations. *Id*., at 35 ¶15.

On September 8, 2017, the Foundation submitted a letter and notice to the State officers 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 specifically for the month of June 2016. *Id*., at 33 ¶ 2 and 35 ¶ 11. The Foundation submitted a second notice concerning this allegation on October 26, 2017. *Id*., at 33 ¶ 2 and 35 ¶ 12. Again, no State officer 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. The complaint was filed 352 days after the Foundation sent its second notice to the state officers concerning its December 16, 2016, allegations and 86

days after the Foundation sent its second notice to the same officers concerning its September 8, 2017, allegations.

On August 28, 2018, SEIU 775 moved to dismiss 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. The trial court heard the matter on November 9, 2018, and denied SEIU 775's motion. *Id*., at 114.[3] SEIU 775 filed a timely Notice of Discretionary Review on December 10, 2018. *Id*., at 147.

On May 2, 2019, the Commissioner of Division II of the Court of Appeals denied discretionary review. The Commissioner acknowledged that the authorities presented by SEIU 775 "may support that the superior court erred" but ultimately found them "insufficient to demonstrate that [the superior court] obviously erred." *Id.,* at 230. SEIU 775 timely moved the Court of Appeals to modify that ruling. *Id.,* at 232 . On August 1, 2019, the Court of Appeals issued an order, without opinion, denying SEIU 775's Motion to Modify the Commissioner's Ruling. *Id.,* at 282 .

While SEIU 775's appellate proceedings were pending, two Superior Court judges interpreted the FCPA in the manner here urged by SEIU 775. Judge Erik Price of the Thurston County Superior Court first did so in two separate actions, now pending before this Court in a

[3] SEIU 775 subsequently moved to certify the question for discretionary review by the Court of Appeals; the trial court denied that request on December 7, 2018. *Id*. at 144.

consolidated direct review action. Judge Carol Murphy of the Thurston County Superior Court also interpreted the FCPA in the manner urged here in yet a third separate action filed by the Foundation. *Id.,* at 262. The Foundation again moved this Court to accept direct review of that decision; that motion is pending.

Meanwhile, Judge Dixon stayed trial proceedings in this case. *Id.,* at 259. On August 27, 2019, the Foundation moved the trial court to lift the stay of proceedings in this case, before SEIU 775's time to appeal the denial of the Motion to Modify had expired or this Court had ruled on the identical legal issues on direct review in the dismissed actions. *Id.,* at 283. SEIU 775 now timely moves for discretionary review of the Court of Appeals' denial of the Motion to Modify the Commissioner's Ruling.

V. GROUNDS FOR RELIEF AND ARGUMENT

A. Standard of Review on a Motion for Discretionary Review.

RAP 13.3 provides that "interlocutory decisions" by the Court of Appeals are subject to discretionary review by the Supreme Court, including, "a decision denying a motion to modify a ruling of the commissioner or clerk which denies a motion for discretionary review." RAP 13.3(a)(2)(i). Discretionary review may be accepted:

> (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or

> (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act.

RAP 13.5(b). Both criteria warrant review here. In addition, although RAP 13.5(b)'s grounds for review are normally exclusive, discretionary review is warranted where the Supreme Court has already accepted review of the very legal issue in dispute in a different case. *Cf. Centr. Puget Sound Reg. Transit Auth. v. WR-SRI 120th N. LLC*, 191 Wn.2d 223, 232, 422 P.3d 891 (2018) (where Court accepted direct review of and consolidated four terminated cases, it also accepted interlocutory review of case "based on the same issues" pending before trial court and then stayed it).

B. Discretionary Review is Appropriate Because the Court has Already Accepted Direct Review of the Legal Issue in Dispute.

Even without regard for the ordinary criteria for discretionary review under RAP 13.5, such review is appropriate here because this Court has already accepted direct review of the legal issue disputed here in *Freedom Found. v. Teamsters Local 117, et al.*, Case No. 97109-9. As explained, although the grounds for discretionary review of an interlocutory decision are normally exclusive, exceptions have been made in analogous circumstances. *See Centr. Puget Sound*, 191 Wn.2d at 232.

Accepting review is all the more urgent because the Foundation has now asked the trial court to lift the stay in this case, even as it

impressed upon this Court the importance of obtaining expedited review of the same legal issue in the dismissed actions. Regardless of procedural posture, expedited review of this case is no less appropriate than for the terminated cases for which the Court has already accepted review.

C. The Court of Appeals Committed Obvious or Probable Error by Failing to Correct the Erroneous Holding that the Foundation Could Bring this Suit More than Ten Days After the State Officers' Failure to Initiate Enforcement Actions.

The FCPA establishes a "comprehensive enforcement scheme" detailing the conditions under which a 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 Requires a Citizen Complainant to Promise to File Suit "Within Ten Days" of the State Officers' Failure to Act.

A fair reading of the words actually used in *former* RCW 42.17A.765(4)(a) shows that the FCPA limits the time for a private citizen to file a citizen's action to a ten-day window subsequent to governmental inaction regarding the citizen's complaint. 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, "further notif[y] 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, "[t]he attorney general and the prosecuting attorney [must] have in fact failed to bring such action within ten days of receipt of said second notice." RCW 42.17A.765(4)(a)(iii).

Two things are clear on the face of subsection (ii): (1) the complainant must warn that *he* – not the State officers – will bring an action specifically within "within ten days" of a condition precedent coming to pass; and (2) the citizen's 10-day period starts upon "their" – the State officers' – "failure to do so," i.e., to commence an FCPA action.

(i) *The "action" to be brought within 10 days is the citizen's.*

With respect to point (1), the 10-day limitation applies to the citizen, not the State officers, 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 State officers' 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 prepositional 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 ruling on this very issue in one of the cases now before the Court on direct review, Judge Price agreed that the last antecedent rule must apply. He found it "[v]ery clear[]" that one "cannot read [*former*] RCW 42.17A.765(4)(a)(ii) as meaning anything other than that notice must include an assertion that the citizen's action will be commenced within ten days upon their failure." App. 189, Exhibit A at 10. Thus, the term "within ten days" "cannot modify anything else in a reasonable way." *Id*.

And although no appellate 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 second notice must make a representation about when the *citizen* will file suit.

The Commissioner's ruling, which the Court of Appeals merely affirmed without opinion, is contradictory on this point. Although she later acknowledged that "subsection 4(a)(ii) requires a complainant to inform the prosecuting attorney and [AG] that the citizen will file suit 'within ten days,'" she initially indicated that subsection (ii) can "reasonably [be] interpreted as a notice formality, which…reminds the prosecuting attorney and [AG] to act within 10 days after receiving the second notice to retain their right to sue." App. 226 at 5. But the second notice cannot serve as a reminder to the State officers about *their* time to act when – as even the Commissioner agreed – the notice must actually inform the officers about when the *citizen* will act.

(ii) *The citizen's window is triggered by the State officers' "failure" to file an enforcement action within their own 10-day window.*

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 (ii) first refers to the citizen's "commence[ment]" of an "action." *Former* RCW 42.17A.765(4)(a)(ii). Bringing such suit is made contingent on "their failure to do so." *Id*. Because of the initial reference to an "action" and the use of the plural "their," which recalls the notice's addressees, the only reasonable way to construe the phrase "their failure to do so" at the end of the sentence is as an allusion to the State officers' own opportunity to bring an action against the alleged violator. Paragraph (4)(a)(iii) then defines what it means for an officer to "fail" to bring an action. This subsection provides the State officers ten days from their receipt of the citizen's second notice to bring an enforcement action. *Former* RCW 42.17A.765(4)(a)(iii). Accordingly, the officers' "failure" does not mean refraining from *ever* suing an alleged violator, but refraining specifically within ten days of receiving the citizen's second notice. Paragraph 4(a)(ii)'s limitation on the time to file a citizen suit "upon their failure" thus means that the citizen must sue within ten days following the expiration of the officers' own ten-day period to act.

Several federal statutes also require plaintiffs to file suit within a certain number of days following the end of an administrative proceeding,

notwithstanding the existence of a separate limitations period. *See, e.g.*, 42 U.S.C. § 2000e-5(f)(1) (ADA or Title VII plaintiff must bring suit within 90 days of EEOC's termination of investigation); 29 U.S.C. § 626(e) (same for ADEA plaintiff); 33 U.S.C. § 1319(g)(6)(b)(ii) (citizen must file suit between 60 and 120 days of notice of intent to sue to proceed on Clean Water Act claims in face of concurrent government action).

The parties do not dispute that the Foundation did not file its citizen action within ten days of the State officers declining to pursue either set of its allegations. The Foundation filed its suit 352 days after 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 issued its second notice concerning the September 8, 2016, allegations, and thus 66 days late under SEIU 775's reading. 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 *former* RCW 42.17A.765(4)(a)(ii) provides that the "action" to be filed "within ten days" of the State 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 State 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 officers fail to act. *See* App. 120-21 at 54:17-55:3. Implicit in this reasoning is the view that a 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 citizen has the same prerogative to initiate a citizen's action regardless of whether the second notice states that he will file suit within ten days of the officers' failure to act or merely that he will file suit at some indefinite point. In either case, he may ignore the required notice terms and file suit at his leisure. It is thus not only probable, but obvious, that permitting a citizen to file suit at any point after the failure of the State officers to act renders the phrase "within ten days" mere surplusage.

Judge Price cogently explained why this is the case:

> [I]t is unreasonable to assume that the Legislature would require such a specific notice if it did not also mean what it says, which is the suit must be actually commenced within the ten days. It would be odd and utterly unsupportable...to have the Legislature have this specific notice be an empty

gesture and not mean what it says.

App. 189, Exhibit A at 6-7.

In her order, the Commissioner did not attempt to reconcile the second notice's acknowledged content with the rule against surplusage. By issuing an order without opinion, the Court of Appeals failed to cure this obvious or probably error.

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 imposes an affirmative notice requirement, the notifying party 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 A.2d 501 (R.I. 1949) (affirming dismissal of trespass and ejectment action where landlord accepted tenant's payment at old rate as credit toward new rent because landlord had 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); *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 NLRA 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").

The Commissioner recognized that these cases can be read to "support that [a] citizen's failure to act as stated means that he or she waives the right to sue," which in turn "may support that the superior court erred." Ruling Denying Review at 5. This is an understatement. These cases are directly on point and their waiver principle applies with full force here. That these cases are, as the Commissioner observes, "out-of-state," *id.*, is a function only of the fairly unusual circumstances at play – a statutory prerequisite that a prospective plaintiff give notice of his future actions, coupled with his failure to consummate those promised actions. But there is no reason to think that Washington would buck the trend of those jurisdictions that have established this sound principle.[4]

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 State officers that the Foundation would file suit within ten days of their inaction, in which

[4] Upholding this principle is all the more critical here, 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 effectively permit the State to make false promises—an outcome that would call into question the State's credibility.

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 Court of Appeal's failure to correct the trial court's holding regarding the meaning of *former* RCW 42.17A.765(4)(a)(ii) constituted obvious or probable error.

D. The Trial Court and Court of Appeals' Rulings Raise the Specter of a Useless Lawsuit.

The second prong of RAP 13.5(b)(1) is satisfied 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. SEIU 775 would be deeply prejudiced by the need to expend time and money to address these factual issues, when the entire case may be resolved on the Foundation's failure to fulfill a threshold requirement.

Washington courts have accepted discretionary review 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, because statute of limitations had not been equitably tolled and plaintiff's suit was therefore procedurally barred); *Shannon v. State*, 110 Wn. App. 366, 368-69, 40 P.3d 1200 (2002) (also finding further proceedings "useless" in light of trial court's "obvious error" on procedural question).

As in *Douchette* and *Shannon*, if the Court adopts SEIU 775's construction, all of the Foundation's claims would fail as a matter of law, because it is undisputed the Foundation did not file suit within ten days of the State officers' failure to act on any of its claims. It would thus be unnecessary to examine 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.[5] Nor would the trial court

[5] SEIU 775 does not concede that determining its primary purpose is fact intensive. It maintains, as argued 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.

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 (1) whether labor unions lack a primary purpose to engage in political activity as a matter of law or (2) 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 SEIU 775's Freedom to Act.

The Commissioner found that SEIU 775 had not satisfied RAP 2.3(b)(2)'s "effects prong." App. 226 at 2-3.[6] The Commissioner is incorrect because SEIU 775's freedom has been limited. Unless this Court 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. 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 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 political activities, thereby chilling an important First Amendment right. *See Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 266, 4 P.3d 808 (2000) (over-inclusive definition of "election-related

[6] The "effects prong" under RAP 13.5(b)(2) is identical to that under RAP 2.3(b)(2).

speech" could have "a chilling effort on political speech," a "core First Amendment freedom[]"). Relatedly, the Foundation's anticipated discovery requests are also likely to demand information about the content and context of SEIU 775's First Amendment activities. This will also tend to chill the exercise of expressive and associational rights.

These results are particular inequitable here because the administrative review process ended with decisions by the State officers to *not* pursue an enforcement action. Indeed, the PDC and attorney general issued written opinions finding and explaining why the Foundation's claims lacked merit. *See* App. at 1-12. While the FCPA certainly contemplates that a citizen may challenge the State officers' findings by filing a separate lawsuit, it does not contemplate allowing the citizen to sit on its administratively-rejected claims for up to two years. Yet this is precisely what the trial court and Court of Appeals' orders accomplish.

VI. CONCLUSION

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

RESPECTFULLY SUBMITTED this 30th day of August, 2019.

By: _____

Dmitri Iglitzin, WSBA No. 17673
Darin Dalmat, WSBA No. 51384
Ben Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400, Seattle, WA 98119

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 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:

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Robert A. Bouvatte
RBouvatte@freedomfoundation.com

Darin Dalmat, WSBA No. 51384

BARNARD IGLITZIN & LAVITT

August 30, 2019 - 1:32 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Freedom Foundation, Respondent v. SEIU 775, Petitioner (527260)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20190830132623SC068238_8164.pdf
  This File Contains:
  Motion for Discretionary Review of Court of Appeals
  The Original File Name was 2019 08 30 MOT for Discretionary Review Final.pdf
- DCA_Other_20190830132623SC068238_0089.pdf
  This File Contains:
  Other - Appendix of Documents: 001-305
  The Original File Name was 2019 08 30 APP iso Mot Disc Review with App.pdf

A copy of the uploaded files will be sent to:

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

Comments:

Sender Name: Jennifer Woodward - Email: woodward@workerlaw.com
Filing on Behalf of: Darin M Dalmat - Email: dalmat@workerlaw.com (Alternate Email: woodward@workerlaw.com)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6016

Note: The Filing Id is 20190830132623SC068238

FILED
SUPREME COURT
STATE OF WASHINGTON
8/30/2019 1:32 PM
BY SUSAN L. CARLSON
CLERK

Rule 13.5 (review of Court of Appeals interlocutory decision)
No: 52726-0-II

Supreme Court Case No: _____

IN THE SUPREME COURT
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
Darin M. Dalmat, WSBA No. 51384
Benjamin Berger, WSBA No. 52909

Attorneys for Petitioner SEIU 775

BARNARD IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

APPENDIX PAGE #	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

APPENDIX PAGE #	DESCRIPTION
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
189-211	Petitioner SEIU 775's Statement of Additional Authorities, filed 2/25/2019 (COA II)
212-218	Petitioner SEIU 775's Second Statement of Additional Authorities, filed 3/21/2019 (COA II)
219-225	Petitioner SEIU 775's Statement of Additional Authorities, filed 4/15/2019 (COA II)
226-231	Ruling Denying Review, entered 5/2/2019 (COA II)
232-258	Petitioner SEIU 775's Motion to Modify Commissioner's Ruling, filed 6/3/2019 (COA II)
259-261	Order Granting Defendant SEIU 775's Motion to Stay, entered 6/28/2019 (Thurston County Superior Court)
262-269	Petitioner SEIU 775's Statement of Additional Authorities, filed 7/1/2019 (COA II)
270-281	Petitioner SEIU 775's Statement of Additional Authorities, filed 7/22/2019 (COA II)
282	Order Denying Motion to Modify Commissioner's Ruling, entered 8/1/2019 (COA II)
283-305	Plaintiff's Motion to Lift Stay Following Denial of Discretionary Review by Division II Court of Appeal, filed 8/27/2019 (Thurston County Superior Court)

RESPECTFULLY SUBMITTED this 30th day of August, 2019.

By: _____

Dmitri Iglitzin, WSBA No. 17673
Darin Dalmat, WSBA No. 51384
Ben Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Iglitzin@workerlaw.com
Dalmat@workerlaw.com
Berger@workerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 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:

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Robert A. Bouvatte
RBouvatte@freedomfoundation.com

Darin Dalmat, WSBA No. 51384

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

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.

<u>SEIU 775 as a Receiver of Contributions Prong</u>

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 the in 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 SEID 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
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

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.

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.

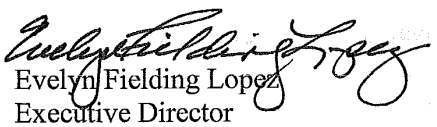
Finally, SEIU 775 has a political committee SEIU Healthcare 775NW Quality Care Committee, which has been registered and reporting with the PDC dating back to 2005.

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.

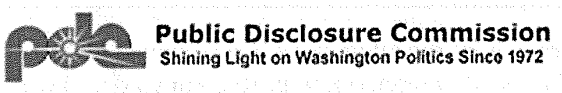
Sincerely,



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



☐ Expedite
☐ No hearing set
☐ Hearing is set
Date:
Time:
Judge/Calendar:

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. SEIU 775, a labor organization; DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer, Defendants.	No. **COMPLAINT FOR CIVIL PENALTIES FOR PAST AND ONGOING VIOLATIONS OF RCW 42.17A.**

I. INTRODUCTION

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3982 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

II. PARTIES

6. Plaintiff Freedom Foundation ("FF" or the "Foundation") is a Washington nonprofit organization.

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

8. Defendant David Rolf at all times material hereto has been and is SEIU's President and is sued in his official capacity.

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

III. JURISDICTION AND VENUE

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3982 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

2017 and October 26, 2017.

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

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

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

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

IV. STATEMENT OF FACTS

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

28. SEIU's LM-2s from 2015 and 2014 reveal that SEIU designated $4,450,038 and $2,654,218, respectively, of its financial resources to use as expenditures for "political activities and lobbying."

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

these other activities constitute political activities.

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

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

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

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

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

45. SEIU's Constitution and Bylaws Section 2.10 mandates that it is the responsibility of every SEIU member to "help build a political voice …"

46. Section 4.5(8) of SEIU's Constitution and Bylaws grants President David Rolf full authority 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."

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

lobbying.

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

> Make no mistake about it: **our [SEIU's] political action** combined with the contributions we make to [SEIU] COPE – our political accountability fund – are the keys to our success. By uniting and flexing our political muscle, we hold politicians accountable for our clients and for ourselves. Every year, thousands of caregivers join together, knock on doors, pass 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**.

(Emphasis added.)

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

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

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

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

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

72. Article 2.10 of SEIU's Constitution and Bylaws states that one of the ***"responsibilities"*** of members is "to help build a strong and more effective labor movement…and to help build a political voice for working people…"

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

[1] "Nonchargeable expenses" are those that are not germane to collective bargaining.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

> The influential union, pivotal in the push for Seattle's $15 minimum wage...has poured more than $1 million into Democrats' campaign committees...It's another 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.

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

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

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

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

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

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

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

---

[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).

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

V. CLAIMS

Claim I: Violation of RCW 42.17A.205

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

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

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

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

104. SEIU is primarily funded by union dues.

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

112. SEIU has never filed a statement of organization.

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

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

Claim II: Violation of RCW 42.17A.235

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

127. SEIU has never filed a statement of organization.

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

2016.

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

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

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

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

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

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

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

VI. REQUESTED RELIEF

WHEREFORE, Plaintiff requests the following forms of relief:

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

DECLARATION OF SERVICE

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

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

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

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

Dated: January 19, 2018

By: _____
Kirsten Nelsen

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

CIVIL

Thurston 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.

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

Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.
Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).
Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.
Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.

CONTRACT/COMMERCIAL

Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.
Commercial Contract-Complaint involving monetary dispute where a contract is involved.
Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.
Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.

PROTECTION ORDER

Civil Harassment-Petition for protection from civil harassment.
Domestic Violence -Petition for protection from domestic violence.
Extreme Risk Protection Order-Petition to restrict ownership, possession, custody or control of a firearm or concealed weapons permit.
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.
Sexual Assault Protection-Petition under RCW 7.90.020.
Stalking- Petition for protection from stalking for victims who do not qualify for a domestic violence protection order. (RCW 7.92.030)
Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.

JUDGMENT

Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.
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.
Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.
Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.
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.)
Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.

OTHER COMPLAINT/PETITION

Petition for Certificate of Restoration of Opportunity-Created under Second Engrossed Substitute House Bill 1553
Change of Name-Petition for a change of name. If change is confidential due to domestic violence/anti-harassment see case type 5 instead.
Deposit of Surplus Funds-Deposit of money or other item with the court.
Emancipation of Minor-Petition by a minor for a declaration of emancipation.
Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.
Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).
Malicious Harassment-Suit involving damages resulting from malicious harassment.
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).
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.
Property Damage-Gangs-Complaint involving damage to property related to gang activity.
Public Records Act-Actions filed under RCW 42.56.
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.
Restoration of Firearms Rights-Petition seeking restoration of firearms rights under RCW 9.41.040 and 9.41.047. *(Eff. 9-2-2014)*
School District-Required Action Plan-Petition filed requesting court selection of a required action plan proposal relating to school academic performance.
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.
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).
Subpoenas-Petition for a subpoena.

PROPERTY RIGHTS

Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.
Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.
Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).
Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.
Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.
Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.

TORT, MEDICAL MALPRACTICE

Hospital-Complaint involving injury or death resulting from a hospital.
Medical Doctor-Complaint involving injury or death resulting from a medical doctor.
Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.

TORT, MOTOR VEHICLE

Death-Complaint involving death resulting from an incident involving a motor vehicle.
Non-Death Injuries -Complaint involving non-death injuries resulting from an incident involving a motor vehicle.
Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.

TORT, NON-MOTOR VEHICLE

Asbestos-Complaint alleging injury resulting from asbestos exposure.
Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.
Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.
Products Liability-Complaint involving injury resulting from a commercial product.
Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.
Victims of Motor Vehicle Theft-Complaint filed by a victim of car theft to recover damages. (RCW 9A.56.078)
Wrongful Death-Complaint involving death resulting from other than professional medical treatment.

WRIT

Writ of Habeas Corpus-Petition for a writ to bring a party before the court.
Writ of Mandamus-Petition for writ commanding performance of a particular act or duty.
Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.
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.
Miscellaneous Writs

Updated: 2/03/2017

☐ Expedite
☐ No hearing set
☐ Hearing is set
Date:
Time:
Judge/Calendar:

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. SEIU 775, a labor organization; DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer, Defendants.	No. 18-2-00454-34 **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES FOR PAST AND ONGOING VIOLATIONS OF RCW 42.17A.**

I. INTRODUCTION

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

II. PARTIES

6. Plaintiff Freedom Foundation ("FF" or the "Foundation") is a Washington nonprofit organization.

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

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

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

III. JURISDICTION AND VENUE

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

IV. STATEMENT OF FACTS

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

28. SEIU's LM-2s from 2015 and 2014 reveal that SEIU designated $4,450,038 and $2,654,218, respectively, of its financial resources to use as expenditures for "political activities and lobbying."

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

45. SEIU's Constitution and Bylaws Section 2.10 mandates that it is the responsibility of every SEIU member to "help build a political voice …"

46. Section 4.5(8) of SEIU's Constitution and Bylaws grants President David Rolf full authority 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."

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

> Make no mistake about it: **our [SEIU's] political action** combined with the contributions we make to [SEIU] COPE – our political accountability fund – are the keys to our success. By uniting and flexing our political muscle, we hold politicians accountable for our clients and for ourselves. Every year, thousands of caregivers join together, knock on doors, pass 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**.

(Emphasis added.)

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

72. Article 2.10 of SEIU's Constitution and Bylaws states that one of the "***responsibilities***" of members is "to help build a strong and more effective labor movement…and to help build a political voice for working people…"

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

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

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

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

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

[1] "Nonchargeable expenses" are those that are not germane to collective bargaining.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

> The influential union, pivotal in the push for Seattle's $15 minimum wage…has poured more than $1 million into Democrats' campaign committees…It's another 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.

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

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

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

---

[2] Other articles to this effect include: 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-clout-keeps-swelling (last visited April 6, 2018).

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

108. The National SEIU contributed $218,487 to the SEIU Political Education and Action Fund on June 29, 2017.[3]

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

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

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

V. CLAIMS

Claim I: Violation of RCW 42.17A.205

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

herein.

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

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

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

116. SEIU is primarily funded by union dues.

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

125. SEIU has never filed a statement of organization.

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

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

Claim II: Violation of RCW 42.17A.235

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

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

2016.

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

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

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

140. SEIU has never filed a statement of organization.

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

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

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

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

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

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

VI. REQUESTED RELIEF

WHEREFORE, Plaintiff requests the following forms of relief:

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

RCW 42.17A, or other law.

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

3. All such other relief the Court deems appropriate.

///////////////

Dated this 6th day of April, 2018.

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

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

DECLARATION OF SERVICE

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

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

Attorneys for Defendants

Dated: April 6, 2018

By: _____
Kirsten Nelsen

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

☐EXPEDITE
☐No Hearing Set
☒Hearing is set
Date: October 5, 2018
Time: 9:00 a.m.
Judge/Calendar: Dixon

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, a labor organization Defendant.	No. 18-2-00454-34 **DEFENDANT SEIU 775'S MOTION TO DISMISS**

RELIEF REQUESTED

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

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

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.

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

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

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

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

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

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

As a matter of law, SEIU 775 does not meet the definition of a political committee under the expenditure prong.[2] The fact that a person has the expectation of making expenditures is insufficient to make it a political committee under the "expenditures" prong. It must, additionally, have as its "primary or one of [its] primary purposes" the goal of seeking to "affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions." *State v. Evans*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976) (citing A.G.O. 1973, June 8, 1973, No. 14, at 25-26). The Court of Appeals, in *Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586, 49 P.3d 894 (2002), *rev. denied* 148 Wn.2d 1020 (2003) ("*WEA*"), made it clear that when a labor organization uses electoral political activity as merely one means to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization's primary purposes. Because the Foundation nowhere alleges that SEIU 775's electoral political activity is anything *other* than one means it uses to achieve its legitimate broad nonpolitical goals, this claim by the Foundation fails and should be dismissed.

The Foundation's alternative argument, that SEIU 775 was a political committee based on the "expenditures" prong based on the alleged magnitude of its expenditures at one specific point in time, June of 2016, is without merit because the FCPA does not sanction this "snapshot"

[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.

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

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

AUTHORITY

A. STANDARD OF REVIEW.

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

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

[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).

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

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

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

The FCPA – in both its operative 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. WA 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.

As those prerequisites and timing limitations existed on the date the instant suit was commenced, the citizen was first obligated to notify "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." *See former* RCW 42.17A.765(4) (Appendix A, page 97; Appendix B, first page). The attorney general and prosecuting attorney then had forty-five days from receiving such notice to commence their own actions against the alleged violator. *Former* RCW 42.17A.765(4)(a)(i). If neither did, the citizen

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

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

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

The time limitation on the "commence[ment] of a citizen's action" is clear and unambiguous. It turns on the statute's use of the phrase "within ten days" and its connection to the state officials' "failure" to act as the moment at which the clock starts.[5] "If a statute is clear

---

[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).

[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

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

on its face, its meaning is to be derived from the language of the statute alone." *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001), *cert. denied*, 534 U.S. 1130, 122 S.Ct. 1070 (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." *Id.* (citing *WA State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 904, 949 P.2d 1291 (1997)) (holding that plain text of state discrimination law clearly limited scope of age discrimination claims, irrespective of policy statement's reference to protecting against age discrimination and gloss providing for liberal construction of the statute).

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

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

> …if 45 days after this first notice the prosecuting attorney and AG have not commenced an action, the person must file a second notice with the AG and

---

P.3d 1020 (2007) ("A reading that produces absurd results must be avoided because it will not be presumed that the 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.

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

> 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. Finally, the AG and the prosecuting attorney must fail to bring such an action within 10 days of receiving the second notice.

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

Even were the Court to construe the filing limitation language as ambiguous – which it is not – there is good reason to believe that the state legislature intended to establish a time limit for a citizen complainant to file FCPA claims.[7] Very simply, a prospective defendant is entitled to repose after a certain period of having a lawsuit looming over it head during the administrative remedies phase of the litigation process. It is unremarkable that a potential plaintiff cannot necessarily sit on his/her rights indefinitely, or to the expiration of a statutory limitations period, after exhausting such remedies. A number of statutes recognize this right by requiring 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

---

[6] If anything, the only ambiguity created by this summary is whether the citizen's time to file is coterminous with the state officers' (creating a "race to the courthouse") or whether it follows the latter's failure. Either way, *WEA* 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.

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

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

This case is a perfect illustration of why the FCPA's time limits following the conclusion of the administrative process are so important. By the Foundation's admission, it filed the "10-day" notice required under former RCW 42.17A.765(4)(a)(ii) twice: first on February 1, 2017, and again on October 26, 2017. Amended Complaint ¶ 12. The February 1 notice corresponds to claims made in Counts I and II of the Amended Complaint (the "primary claims"), while the October 26 notice corresponds to claims made in Counts III and IV (the June 2016 "alternative claims"). The attorney general and prosecuting attorney therefore had until February 11, 2017 to bring charges connected with the primary claims and until November 5, 2017 to bring charges connected with the alternative claims. After those dates, it was incumbent on the Foundation to bring a complaint within ten days. Instead, the Foundation filed its complaint in this action on January 19, 2018. *See* Dkt. No. 1. Accordingly, 342 days – nearly an entire year – elapsed between the tenth day following the Foundation's second notice to the state officials regarding its primary claims and the date the Foundation eventually filed its complaint. Likewise, 75 days elapsed between the end of the window for the state officials to act on the Foundation's alternative allegations and their inclusion in the complaint. During those intervals, SEIU 775 was left to guess as to whether the Foundation intended to sue it over these allegations. The legislature enacted a post-administrative exhaustion time limit on bringing citizen's action in state court to prevent such abuses. Accordingly, the instant lawsuit must be dismissed.

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

C. ALTERNATIVELY, THE 2018 AMENDMENTS TO WASHINGTON'S FAIR CAMPAIGN PRACTICES ACT REQUIRE THAT THIS ACTION BE DISMISSED BECAUSE THE FOUNDATION DID NOT FIRST FILE A COMPLAINT WITH THE PDC.

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

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

D. SEIU 775 IS NOT A POLITICAL COMMITTEE UNDER THE "EXPENDITURES" PRONG.

The FCPA defines a "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

[8] SEIU 775 is aware that this Court has rejected this argument in a different case involving a citizen suit filed prior 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.

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

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

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

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

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

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

and professional security of its members," and accomplished this purpose "not only by conducting contract negotiations and strikes, but also by legislative lobbying and electoral political activity when its members' economic security is implicated." *Id.* at 601. After comparing the trial court's findings and engaging in this analysis, *WEA* held that based on the uncontested facts, the Washington Education Association was not a political committee under the "maker of expenditures" prong. *Id.* at 602.

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

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

A set forth with clarity in SEIU 775's Constitution and Bylaws, SEIU 775's 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." Iglitzin Dec., Ex. A, Article 1.5 (p.3). Its 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.

Id., Article 1.5. Electoral political activity is at most just one of **eight** means by which SEIU 775 seeks to accomplish these goals:

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

> **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.

Id. (pp. 3-4).[9]

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

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

> A finding that WEA was a political committee would require WEA to file detailed reports to the PDC of all bank accounts, all deposits and donations, and all expenditures, including the names of each person contributing funds. All funds would have to be reported, even those used for traditional labor union activities not connected with electoral campaign activity, such as collective 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).

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

> The trial court considered the WEA's goals, core values, pronouncements, and the implementation of those pronouncements. The trial court found that WEA's "purpose [was] to enhance the economic and professional security of its 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.

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

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

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

[10] The Court in *WEA* also discussed a "nonexclusive list of analytical tools a court may use when evaluating the evidence," which included: "(1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the 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.*

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

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

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

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

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

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

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

> 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.

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

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

---

[11] The above-referenced PDC and Attorney General conclusions are appropriately entitled to deference by this court, because they fall within the opinion agencies' area of expertise. *See, e.g., Hill v. Garda Cl. Northwest, Inc.*, 198 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)).

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

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

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

E. SEIU 775 WAS NOT A POLITICAL COMMITTEE UNDER THE "EXPENDITURES" PRONG IN JUNE OF 2016.

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

---

[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).

[13] A trial court may, where appropriate, dismiss a portion of or theory supporting a particular claim. *See Brandt v. Medtronic, Inc.*, No. 12-2-07422-4 (Wash. Super. Ct. Sep. 19, 2013) (granting CR 12(b)(6) motion with respect to a portion of Plaintiff's loss of consortium claim and denying the motion as to the remainder of the loss of consortium 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.

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

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

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

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

[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.

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

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

A common sense reading of the FCPA supports this approach. The statute defines a "political committee" in terms of a person or group's "expectation." To qualify, the person must expect to "receiv[e] contributions or mak[e] expenditures" which will be used to support or oppose a candidate or ballot proposition. RCW 42.17A.005(37). Under the Foundation's reading, an entity's expectation in this regard might oscillate wildly from month to month. One month it might expect to receive or spend vast sums, and the next month (or stretch of months), nothing. Anyone remotely familiar with campaign finance knows that this is not how political committees operate. The vast majority of organizations plan their budgets, fundraising activities, and advertising campaigns based on at least one calendar year or election cycle. *See, e.g.*, Karen Fabean, Your PAC is a Small Business: Are You Running It Like One?, National Association of Business Political Action Committees, 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 your PAC that identifies opportunities for program enhancements and growth, an operating budget and a timeline is essential to success."). Accordingly, they "expect" to receive contributions and make expenditures over the course of a year or a period of years, not for any given month. Any increment of time shorter than a year is susceptible to unforeseen budgetary shortfalls and surpluses that can throw campaign plans into disarray.

[15] *Utter* at one point used the phrase "during any relevant time period" in discussing the balancing test imposed by 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.

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

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

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

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

In interpreting a statute, courts "first look[] to its plain language. If the plain language of the statute is unambiguous, then the court's inquiry is at an end," and "[t]he statute is to be

[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.

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

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

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

CONCLUSION

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

DATED this 28th day of August, 2018.

Dimitri Iglitzin, WSBA #17673
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971
Phone: (206) 257-6003
Fax: (206) 257-6038

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
PO Box 552
Olympia, WA 98507
E-mail: jabernathy@myfreedomfoundation.com
E-mail: EStahlfeld@freedomfoundation.com
E-mail: KNelsen@myfreedomfoundation.com

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

Jennifer Woodward, Paralegal

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

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

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

RELIEF REQUESTED

This Court should deny Service Employees International Union 775's ("SEIU") Motion to Dismiss, whether considered under Civil Rule 12(b)(6) or 12(b)(1).[1]

STANDARD OF REVIEW

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

> …shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying…

ARGUMENT

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

I. NEITHER FORMER RCW 42.17A.765 OR CURRENT RCW 42.17A.775[3] REQUIRED PLAINTIFF TO FILE THIS ACTION WITHIN TEN DAYS OF THE AG'S AND PROSECUTING ATTORNEYS' FAILURE TO ACT.

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

---

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

[3] Given this Court's previous rejection of Defendant's argument that amended RCW 42.17A.775 applies, former RCW 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.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

A. The unambiguous language of RCW 42.17A.765 does not bar Plaintiff's action.

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

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

B. Alternatively, legislative history supports Plaintiff's interpretation and courts have resolved any ambiguity in Plaintiff's favor.

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

The Division 2 Court of Appeals resolved this ambiguity in Plaintiff's favor in *EFF 1*. There the Court of Appeals interpreted the "ten days" in subsection (4)(a)(ii) to be the same "ten days" in subsection (4)(a)(iii). In *EFF 1*, the court stated that "the person must file a second notice with the AG and [PA] notifying them that the person will commence a citizen's action **within 10 days of the second notice** if neither the [PA] nor the AG acts…" and that "the AG and the [PA] must "in fact" fail to bring such an action **within 10 days of receiving the second notice**" before the complainant can file a citizen action. 111 Wn. App at 604 (emphasis added). Multiple courts

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

> …such person has [after forty-five days] further notified the attorney general and 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).

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

---

[7] Available at http://leg.wa.gov/CodeReviser/documents/sessionlaw/1975ex1c294.pdf?cite=1975%201st%20ex.s.%20c%20294%20%C2%A7%2027; (last visited October 26, 2018).

[8] *See* "Sectional analysis of Engrossed Second Substitute House Bill No. 827 as amended by the House," prepared by nonpartisan committee staff of the House Committee on Constitution and Elections, May 8, 1975, Abernathy Decl., Ex. A (p. 7) ("Section 26 - Repealed the authorization of a citizen to bring suit alleging a violation of this chapter."); "Summary of All Major and Some Minor Amendments to Second Substitute House Bill 827," Washington State House of Representatives, May 8, 1975, Abernathy Decl., Ex. B (("25. Deletes so called) 'bounty hunter' clause which 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*].");

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

[9] All indications suggest that the change in the "ten day" language in the 1975 Amendments only imposed a 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.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

> In essence, it [HB 1832] shortens citizen complaint periods for complaints against campaigns for violations to two years. And, those of us who have been around campaigns know that after two years — if you have an issue campaign, if you have a losing campaign, even a winning campaign — the volunteer staff and folks 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://lawfilesext.leg.wa.gov/biennium/2007-08/Pdf/Bills/Session%20Laws/House/1832-S.SL.pdf?cite=2007%20c%20455%20%C2%A7%201; (last visited October 28, 2018).

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

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

---

[11] Available at 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://lawfilesext.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/House/1832.HBA%2007.pdf (last visited October 28, 2019).

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

An organization that makes or expects to make expenditures to further electoral political goals and does so as one of its "primary purposes…" constitutes a political committee under RCW 42.17A.005(37). *EFF 1*, 111 Wn. App. at 598-99.[16] The Amended Complaint alleges as much in ¶¶ 120-124, 129, and also alleges facts sufficient to support these allegations. *See infra*. Additional facts "consistent with the complaint" also support these allegations. *Bravo,* 125 Wn.2d at 750.

SEIU cites its own Constitution and Bylaws and concludes "[i]t is clear beyond any dispute, based on these stated goals, that electoral political activity is not one of SEIU 775's primary purposes, but is instead just one of the means by which SEIU 775 seeks to achieve its 'legitimate broad nonpolitical goals.'" SEIU Br., 14. SEIU cites *EFF 1* for the supposed principle that "…if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization's primary purposes." *EFF 1*, 111 Wn. App. at 600. But in doing so SEIU substitutes a factual application in

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

The applicable *rule* is that, to be considered a political committee, an organization must make political expenditures and have as one of its primary purposes the goal of seeking to "affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions." *State v. Evans*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976). Determining if this requirement is satisfied involves examining the organization's stated goals and mission *to ascertain* "whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question." *EFF 1,* 111 Wn. App. at 599. The court then states that "under *this* [immediately preceding] analysis," a court is to employ a factors test, four of which include (nonexclusively) (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the 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.

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

Complaint which support the idea that SEIU has restated its primary political purpose in broad nonpolitical terms. Such evidence includes SEIU's own words. Am Compl., ¶ 54 ("Because state, federal, and local legislative activity affects the wages, benefits, and rights of all workers, and because the long-term care industry specifically is funded in principal part by public dollars, the outcome of elections for many public offices is very important to the Employer [SEIU 775]."). The enthusiastic statements of SEIU executives at SEIU conventions and in letters and emails to potential SEIU members and SEIU members[17] also constitute evidence that its real goals and missions are articulated at those conventions and in those letters and emails, rather than in its self-serving Bylaws—especially considering SEIU's actual political expenditures.

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

[17] *See e.g.*, Former SEIU President David Rolf informs SEIU members (and the public) at SEIU conventions of SEIU's political activities, Am. Compl., ¶¶ 35-37, 80, 90; SEIU informs SEIU members (and the public) of its political activity 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.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

Moreover, even SEIU's stated strategies indicate political activity is one of its primary purposes, supporting the argument that even SEIU's **stated** goals and strategies display a political purpose—an argument both complaint's allegations also support. Of the eight strategies SEIU cites it employs in Art. 1.6 of its Bylaws, *see also* Am. Compl. ¶ 46, the first five directly implicate

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

political activity. SEIU Br., 14. For example, SEIU builds worker leadership and activism. "Activism" is nearly always **political** activism and SEIU's own statements cited above support the idea that SEIU spends resources engaging itself and others in political activism, many of which may constitute political activity under the FCPA. *See, e.g.*, Am. Compl., ¶¶ 35-38. SEIU also helps workers form unions and "other powerful organizations." SEIU Br., 13. SEIU's own words, some cited above, indicate that these are likely organizations engaging in political activity. "Hold[ing] politicians accountable" is overtly political. *Id*. As for "bargain[ing] strong contracts," SEIU has overtly stated that it uses political activity for leverage in collective bargaining, i.e. negotiating "strong contracts." Am. Compl., ¶ 36. And "advance[ing] pro-worker policy through influencing government" is also overly political. SEIU Br., 14. Even #6, "[b]uild strategic partnerships," may involve political activities such as partnering with political committees and candidates. Lastly, strategies #7 and #8 are so vague, it is difficult to divine their meanings at all. Thus, at least five of SEIU's strategies, arguably six, directly implicate political activity. Facts alleged in the complaints certainly support this and Plaintiff is entitled to discovery to find evidence supporting its allegations.[18]

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

EFF 1 pointedly states that a court cannot ignore any obfuscation in an organization's stated purposes if the organization puts a majority of its effort toward political activity. 111 Wn. App. at 600. In June, 2016, SEIU did just that.

[18] SEIU also states, "[T]here is no allegation that anything close to 'a majority' of SEIU 775 expenditures were spent 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*.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

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

[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."

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

disclosure requirements.

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

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

Fifth, SEIU misinterprets both *EFF 1* and *Utter* by turning the facts in those cases into the legal standard. In *EFF 1*, the Court explicitly laid out the "appropriate framework," which is determining "whether electoral political activity was a primary means of achieving the stated goals and mission **during the period in question**." *EFF 1*, 111 Wn. App. 599 (emphasis added). The Court went on to state that, if "one of the organization's primary purposes was electoral political

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

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

SEIU contends that requiring it to register as a political committee on a monthly basis would be "absurd," SEIU Br., 21, and "arbitrary," *id*., given that "a majority of organizations plan

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

their budgets, fundraising activities, and advertising campaigns based on at least one calendar year or election cycle." *Id*. at 20. If SEIU operated as do "a majority of organizations" and planned its intense burst of political activity in the summer and fall of 2016, setting funds aside for such purpose, then SEIU became a political committee under the receiver of contributions prong for the entire calendar year. Alternatively, if the union simply had significant amounts of cash available and spontaneously determined in June 2016 to spend vast sums of it on electoral political activity to single-handedly pass a ballot initiative, it should not be permitted to skirt disclosure requirements by enlarging the scope of inquiry to dilute its significant campaign activity.

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

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

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

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

prong is not a separate claim.[20]

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

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

[20]If an entity happens to meet two of the ways to become a political committee there are not two separate violations, but one. By way of analogy, there can by 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.

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

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

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

V. THE 2018 AMENDMENTS DO NOT BAR THE FREEDOM FOUNDATION'S CITIZEN ACTION.

SEIU argues that the 2018 Amendments to the FCPA bar the Foundation's action. As SEIU notes, this Court previously rejected this argument. SEIU Br., 11, n. 8.[21] SEIU offers no new arguments; this Court should again reject this argument, for the identical reasons offered in the Foundation's Response to SEIU 775's Motion to Dismiss, filed June 18, 2018.

CONCLUSION

This Court should deny SEIU's Motion to Dismiss.[22]

RESPECTFULLY SUBMITTED on October 29, 2018

By: _____

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

[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.

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:

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

Attorneys for Defendants

Signed October 29, 2018, at Olympia, Washington.

Kirsten Nelsen

FREEDOM FOUNDATION
Legal@myFreedomFoundation.com
360.956.3482 | myFreedomFoundation.com
WA | PO Box 552, Olympia, WA 98507
OR | 736 Hawthorne Ave NE, Salem OR 97301

☐EXPEDITE
☐No Hearing Set
☒Hearing is set
Date: November 9, 2018
Time: 9:00 a.m.
Judge/Calendar: Dixon

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, a labor organization Defendant.	No. 18-2-00454-34 **DEFENDANT SEIU 775'S REPLY IN SUPPORT OF MOTION TO DISMISS**

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

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/it[2] 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.

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

prosecutor's – "failure to do so." Subsection (i) refers to the officials' "fail[ure] to commence an action hereunder…." Former RCW 42.17A.765(4)(a)(i). Thus, "failure to do so" in subsection (ii) is an allusion to the "failure" to bring an enforcement proceeding introduced in subsection (i). Subsection (iii) discusses that "failure" yet again, and provides the attorney general and county prosecutor ten days from their receipt of the citizen's second notice to bring an enforcement action. Former 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.[3]

The Foundation's primary objection is that subsection (ii) facially requires the would-be plaintiff only to "notify" the attorney general and county prosecutor that he will file suit within ten days of their declining to bring their own enforcement actions; it does not *expressly* require it to act in accordance with that notice. Found. Br., 4. Implicit in this reasoning is the premise that a 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 serves no purpose to require a party to warn others of one's imminent actions and then permit it to disregard its own warning, and 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).[4] Second, whenever a statute imposes a notice requirement, it establishes a

---

[3] 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. 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

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

concordant duty for the issuer thereof to act in accordance with the notice's terms, breach of which waives any rights that would otherwise follow. *See, e.g., Abbenante v. Giampietro*, 75 R.I. 349, 352, 66 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).[5] The Foundation alleges it provided the notice required by former RCW 42.17A.765(4)(a)(ii), Compl. ¶ 2, but, in view of the date it filed the original complaint, it plainly did not abide by the terms of its own notice.[6]

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

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

---

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

[5] *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. 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 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.

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

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." 111 Wn. App. at 604 (emphasis added). *EFF I* thus announced unequivocally that the time to file a citizen suit is temporally limited by the date of the second notice. Therefore, rather than supporting its objection to SEIU 775's motion, *EFF I* refutes the Foundation's own reading of the statute. Nor does *State ex rel. Evergreen Freedom Found. v. Nat'l Educ. Ass'n ("EFF II")*, 119 Wn. App. 445, 91 P.3d 911 (2003) assist the Foundation. It is true the Court there observes that "the statute's clear intent [is] that the AG or county prosecutor's 'commencement of an action' within the proscribed time period precludes a citizen's action." *Id*. at 453. But the question here is not what consequences follow either official's commencement of an action, but what consequences follow their *inaction*. *EFF II* does not address that question.[7]

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

[7] At any rate, the Foundation ignores the context in which the excerpted comment was made. In *EFF II*, the Court of 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*.

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

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

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, § 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*.[8]

C. The FCPA's Legislative History Supports the Plain Reading.

The Foundation's arguments based on the FCPA's legislative history are flawed. First, Washington courts do "not look to legislative history if the provision [in question] is unambiguous." *WA Off Highway Vehicle Alliance v. State*, 176 Wn.2d 225, 235, 290 P.3d 954 (2012). As demonstrated above, the disputed portion of former RCW 42.17A.765(4)(a) is not ambiguous. It plainly requires a citizen to file a lawsuit within a ten day window. Accordingly, the Court cannot examine legislative history to construe what needs no further construction. Second, the Foundation's theory rests on an argument from silence. It points to no evidence that the legislators in the 1975 session sought to give citizens unlimited time to file suit following the

[8] 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 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).

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

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

II. SEIU 775 IS NOT A "POLITICAL COMMITTEE" UNDER THE EXPENDITURE PRONG.

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

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

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

---

[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.

[10] The Foundation objects that SEIU 775's reading of the statute would make a citizen suit "impossible" because it 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.

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

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

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

B. Taken on Their Own Terms, the Amended Complaint's Allegations are Insufficient.

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

[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.").

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

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

Stripped of statements conflating "political" and "electoral" activities, the Complaint is

[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.

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

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

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

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

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

86 Wn.2d at 503 ("…the Dan Evans Committee made a single contribution of $500.00 to the Early Birds Fund of the Washington Republican Central Committee… No other contributions of a similar nature were made."). By the Foundation's logic, the Court could have asked whether the Dan Evans Committee was a political committee solely on the day it contributed $500. What is more, the Foundation's approach makes the tail wag the dog. The PDC and some trial courts examine the relative percentage of an organization's revenue spent on electoral activity, although appellate courts have not endorsed this inquiry. *See EFF I*, 111 Wn. App. at 601. Even if permitted, the percentage inquiry is only a proxy and one of a number of tools aimed at identifying an entity's purpose. These tools are all oriented to a long time horizon. *Id.* at 600; *see also* SEIU Mot., at 15, n.10. The Foundation inverts the purposive analysis by selecting one non-judicially recognized tool, ignoring all others, training it on a timescale that is not an appropriate measure for the subject of inquiry, and letting that dictate the answer. For these reasons, SEIU 775 was not a political committee specifically in June 2016.[13]

CONCLUSION

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

DATED this 5th day of November, 2018.

Dmitri Iglitzin, WSBA #17673
SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971
Phone: (206) 257-6003
Fax: (206) 257-6038
Attorneys for SEIU 775

[13]The 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

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

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

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 NOV -9 AM 11:57

Linda Myhre Enlow
Thurston County Clerk

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

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, et al., Defendants.	NO. 18-2-00454-34 **[~~Proposed Order~~ Denying] DEFENDANT SEIU 775's MOTION TO DISMISS**

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 ~~Patrick~~ Benjamin Berger

DTG
JD

The Court having considered the following:

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

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

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. JD DI

DONE IN OPEN COURT this __ day of November, 2018.

THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

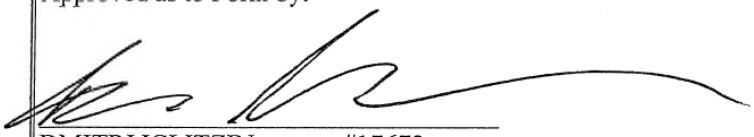
FREEDOM FOUNDATION
P.O. Box 552, Olympia, WA 98507
P: 360.956.3482 | F: 360.352.1874

Presented by:

Eric R. Stahlfeld, WSBA #22002

ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

Approved as to Form by:



DMITRI IGLITZIN, WSBA #17673

ATTORNEY FOR DEFENDANT

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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington,	)	
Plaintiff,	)	No. 18-2-00454-34
vs.	)	
SEIU 775, a labor organization; DAVID ROLF, its president; and ADAM GLICKMAN, its Secretary-Treasurer,	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 9th day of November, 2018, the above-entitled and numbered cause came on for hearing before the Honorable James J. Dixon, Judge, Thurston County Superior Court, Olympia, Washington.

Kathryn A. Beehler, CCR No. 2448
Certified Realtime Reporter
Thurston County Superior Court
2000 Lakeridge Drive S.W.
Building 2, Room 202
Olympia, WA 98502
(360) 754-4370

A P P E A R A N C E S

For the Plaintiff:

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

For the Defendant:

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

I N D E X

Description	Page Reference
Court Calls Case/Introductions	4
Motion to Strike - Argument by Mr. Stahlfeld	4
Motion to Strike - Argument by Mr. Berger	6
Motion to Strike - Rebuttal by Mr. Stahlfeld	11
Motion to Strike - Oral Ruling of the Court	13
Motion to Dismiss - Argument by Mr. Berger	14
Motion Dismiss - Argument by Mr. Stahlfeld	33
Motion to Dismiss - Argument by Mr. Berger	47
Motion to Dismiss - Oral Ruling of the Court	54

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.

1 Thank you, everyone.
2 MR. IGLITZIN: Thank you, Your Honor.
3 MR. STAHLFELD: Thank you.
4
5 (Conclusion of the November 9, 2018, Proceedings.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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, Plaintiff, vs. SEIU 775, a labor organization; et al., Defendant.	Case No. 18-2-00454-34 REPORTER'S CERTIFICATE

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

☐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

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

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

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

STATEMENT OF ISSUES

Whether the Court should 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.

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

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

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

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

While the undersigned respects the trial court's ruling on this question, reasonable minds may at the very least disagree as to whether construing subsection (ii) solely as a notice requirement renders the term "within ten days" superfluous. 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 Foundation'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 arguable, but in fact inescapable, 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.

Reasonable minds may also disagree as to whether, 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, there is a concordant duty for the issuer thereof to act in accordance with the notice's terms, breach of which waives any rights that would otherwise follow. *See, e.g.*, *Abbenante v. Giampietro*, 75 R.I. 349, 352, 66 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

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

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 10 months). Although there does not appear to be any binding Washington precedent on this point, certification of this issue will help clarify the scope of this principle's application.

The legal question at issue here involves a potential procedural bar to suit and turns on the resolution of a disputed statutory construction. Superior courts have certified interlocutory orders for discretionary review and appellate courts have independently granted such review in similar contexts. For instance, in *Williams-Moore v. Estate of Shaw*, 122 Wn. App. 871, 96 P.3d 433 (2004), the trial court was faced with the issue of whether a personal injury plaintiff who was nominally appointed as the personal representative of the estate of the personal injury defendant could accept service on behalf of the estate for her own personal injury complaint. *Id*. at 873. The defendant estate moved for summary judgment in part on the ground that the plaintiff was not qualified to act as personal representative because she had not filed a bond, as ordered by the probate commissioner, at the time she accepted service of the complaint. *Id*. at 875-76.

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

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

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

B. Immediate Review of the Court's November 9, 2018 Order Will Materially Advance the Ultimate Termination of the Litigation.

Obtaining review of the Court's November 9, 2018 order now would create significant

[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.

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

economy in the litigation, as it may eliminate the need for protracted discovery and litigation concerning SEIU 775's political committee status – which, in the oral ruling memorialized by the same order, the Court found necessary to resolve the Foundation's claims on the merits. 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 necessity of expending time and money to address this factual issue, when the case may be resolved on the insufficiency of fulfilling a threshold requirement. Conversely, if a court of appeals adopts SEIU 775's construction of *former* 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 potentially 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.[2] Nor would the Court need to address the novel legal questions – not reached in its 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.

Accordingly, there is a significant possibility that immediate review will expedite the disposition of this case, thereby satisfying the second prong of certification under RAP 2.3(b)(4).

[2] SEIU 775 does not concede that determining its primary purpose is a fact-intensive inquiry. It maintains, as alluded 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.

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

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.

Dmitri Iglitzin, WSBA No. 17673
Benjamin Berger, WSBA No. 52909
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Phone: (206) 257-6003
Fax: (206) 257-6038
E-mail: *iglitzin@workerlaw.com*
E-mail: *berger@workerlaw.com*

[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.

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

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

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

☐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)**

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.

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 unrebutted 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.

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.

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.

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

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

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

As to whether its reading would render the phrase "within ten days" meaningless, the Foundation observes first that the Court already rejected this argument. In fact, the Court did not address the question of surplusage at all in its oral ruling, as confirmed by the transcript of the proceeding, the relevant portion of which the Foundation incorporates into its own brief. *See* Found. Res., at 6, n.4. But even if the Court had rejected this specific component of SEIU 775's argument, that fact would not affect the Court's inquiry here. SEIU 775 is not asking for the Court to reconsider its November 9, 2018 ruling. Indeed, SEIU 775 explained at the outset of its Motion that it "respects the trial court's ruling on this question." SEIU 775 Mot. at 4. It asks only for the Court to certify the issue for discretionary review because it is susceptible to a reasonable difference of opinion. The Foundation also urges that issuing the notice as described would not be meaningless because doing so has the effect of warning the public officials "that they have only ten days to act should they wish to control the FCPA allegation." Found. Res. at 7. However, the Foundation's reading once again confuses or purposely alters the requisite notice language. It is true that a notice would serve the proposed warning function if it said that the citizen "will commence a citizen's action upon *their* failure to do so *within ten days*." But that is not what *former* RCW 42.17A.765(4)(a)(ii) requires the notice to say. The provision states instead that after sending the initial notice, the citizen must "further notif[y] the attorney general and prosecuting attorney that the

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

person [i.e., the citizen] 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). The phrase "within ten days" unambiguously applies to the filing of the citizen's action, not to the public officials' enforcement actions. *See* SEIU 775 Mot. to Dismiss, 8.[1] Accordingly, and as this Court recognized in its oral ruling, *see* Found. Res., 6, n.4, the notice must warn the public officials that the *citizen* will sue within ten days of the public officials failing to act – i.e., within ten days of the expiration of the officials' own 10-day window to file suit. It is the notice's required warning regarding when and how the citizen will proceed after it gains control of the FCPA claims – not what the public officials must do to avoid losing control over them – that SEIU 775 contends becomes surplusage under the Court's current reading.

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

---

[1] Ironically, despite nominally agreeing that the statutory language is plain and unambiguous, Found. Res., 5-6, the Foundation continues to offer interpretations that rearrange the provision's material terms. If the Foundation believes 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

[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.

[5] The Foundation claims that while SEIU 775's legal *theory* may be one of first impression, the *issue* itself is not. Found. 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 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.

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

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

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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED this 5th day of December, 2018.

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

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

Benjamin Berger, WSBA No. 52909
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971
Phone: (206) 257-6006
E-mail: *iglitzin@workerlaw.com*
robbins@workerlaw.com
franco@workerlaw.com
berger@workerlaw.com

Attorneys for Defendant SEIU 775

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

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

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 DEC -7 AM 10: 05

Linda Myhre Enlow
Thurston County Clerk

☐ Expedite
☐ No hearing set
X 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, Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, et al., Defendants.	No. 18-2-00454-34 **~~[Proposed]~~ ORDER DENYING DEFENDANTS SEIU LOCAL 775'S MOTION FOR CERTIFICATION OF A QUESTION FOR INTERLOCUTORY APPEAL**

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

The Court having considered the following:

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

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

2. Plaintiff Freedom Foundation's Response to Motion to Dismiss Defendant SEIU 775's Motion for Certification of a Question for Interlocutory Appeal;
3. Declaration of Maxford Nelsen in Support of Plaintiff's Response to Defendant SEIU 775's Motion for Certification of a Question for Interlocutory Appeal.
4. Defendant's Reply in Support of Motion for Certification of a Question for Interlocutory Appeal;
5. _____;
6. _____;

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

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

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

THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

James Dixon

Presented by:

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

Approved as to Form by:

DMITRI IGLITZIN, WSBA #17673
ATTORNEY FOR DEFENDANTS

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

BENJAMIN BERGER, WSBA #52909
ATTORNEY FOR DEFENDANTS

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

☐EXPEDITE
☒ No Hearing Set
☐Hearing is set
Date:_____
Time:_____
Judge/Calendar:_____
_____

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 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:

/ / / / /

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

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
IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971
Phone: (206) 257-6003
iglitzin@workerlaw.com
robbins@workerlaw.com
franco@workerlaw.com
berger@workerlaw.com

Attorneys for Defendant SEIU 775

DECLARATION OF SERVICE

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

James G. Abernathy
JAbernathy@myfreedomfoundation.com

Eric R. Stahlfeld
EStahlfeld@freedomfoundation.com

Kirsten Nelsen
KNelsen@myfreedomfoundation.com

Jennifer Matheson
JMatheson@freedomfoundation.com

General mailbox
Legal@myfreedomfoundation.com

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

Genipher Owens, Paralegal

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

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 NOV -9 AM 11:57

Linda Myhre Enlow
Thurston County Clerk

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

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, et al., Defendants.	NO. 18-2-00454-34 **[~~Proposed Order~~ Denying] DEFENDANT SEIU 775's MOTION TO DISMISS**

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 ~~Patrick~~ Benjamin Berger

DTG
JD

The Court having considered the following:

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

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

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. JD DI

DONE IN OPEN COURT this __ day of November, 2018.

THE HONORABLE JAMES DIXON
SUPERIOR COURT JUDGE

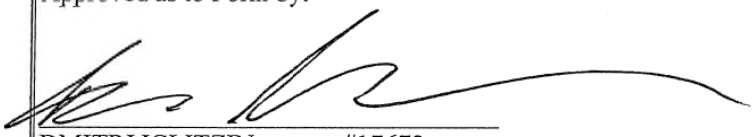
FREEDOM FOUNDATION
P.O. Box 552, Olympia, WA 98507
P: 360.956.3482 | F: 360.352.1874

Presented by:

Eric R. Stahlfeld, WSBA #22002

ATTORNEY FOR PLAINTIFF FREEDOM FOUNDATION

Approved as to Form by:



DMITRI IGLITZIN, WSBA #17673

ATTORNEY FOR DEFENDANT

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

KeyCite Red Flag - Severe Negative Treatment
Enacted LegislationAmended 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:

WESTLAW © 2018 Thomson Reuters. No claim to original U.S. Government Works.

(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.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

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.**

TABLE OF CONTENTS

Article 1 – Name, Charter, Jurisdiction, Mission, Vision and Goals 3

Article 2 – Membership 4

Article 3 – Dues and Revenues 7

Article 4 – Union Officers 9

Article 5 - Executive Board 13

Article 6 – Union Officer Elections 15

Article 7 – Convention and Membership Meetings 18

Article 8 – Collective Bargaining and Representation 18

Article 9 – Dissolution 19

Article 10 – Property Rights 19

Article 11 – International Constitution and Bylaws 19

Article 12 – Trials and Appeals 20

Article 13 – Protection against personal, union suits 20

Article 14 – Bonding 20

Article 15 – Savings Clause 20

Article 16 – Amendments 20

APPENDIX A: SEIU CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

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 President~~s~~, 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 changes, 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.

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 STATEMENT OF ADDITIONAL AUTHORITIES

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

Pursuant to RAP 10.8, Petitioner SEIU 775 hereby identifies the following additional authorities and the issues to which they correspond:

1. The transcript of the hearing and oral ruling on the Motion to Dismiss in *Freedom Foundation v. Service Employees International Union Political Education and Action Fund*, No. 18-2-01731-34 (Thurston Cty. Feb. 8, 2019) (Price, J.). The transcript corresponds to the Superior Court order referenced on page 4 of Petitioner's Reply in Support of Discretionary Review and on pages 1-2 on the Supplemental Appendix attached thereto. The transcript is relevant to the issues of (1) whether any other court has interpreted the statutory provision in question as Petitioner urges and (2) whether the Superior Court's reasoning in this case manifests obvious or probable error. A copy of the transcript is attached hereto as Exhibit A.
2. A copy of RCW 42.17A.140 (Date of receipt—Exceptions—Electronic filings). This provision is relevant to the issue, discussed on page 18 of Respondent Freedom Foundation's Response and on page 7 of Petitioner's Reply, of whether there is indeterminacy as to the date on which the Attorney General and prosecuting attorney are conclusively presumed to have received the citizen notice required under *former* RCW

42.17A.765(4)(a)(ii). A copy of the provision is attached hereto as Exhibit B.

RESPECTFULLY SUBMITTED this 25th day of February, 2019.

By: _____

Dmitri Iglitzin, WSBA No. 1767
Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Iglitzin@workerlaw.com
Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com

Counsel for Petitioner/Defendant SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2019, I caused the foregoing STATEMENT OF ADDITIONAL AUTHORITIES to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Dmitri Iglitzin, WSBA No. 17673

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, vs. SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION AND ACTION FUND, a political committee, Defendants.	No. 18-2-01731-34

TRANSCRIPT OF RECORDED PROCEEDINGS

BE IT REMEMBERED that on the 8th day of February, 2019, the above-entitled and numbered cause came on for hearing before the Honorable Erik D. Price, Judge, Thurston County Superior Court, Olympia, Washington.

Kathryn A. Beehler, CCR No. 2448
Official Court Reporter
Thurston County Superior Court
2000 Lakeridge Drive S.W.
Building 2, Room 202
Olympia, WA 98502
(360) 754-4370

A P P E A R A N C E S

For the Plaintiff:

Eric Rolf Stahlfeld
Attorney at Law
145 SW 155th Street
Suite 101
Burien, WA 98166-2591
206-248-8016
lawyer@stahlfeld.us

For the Defendant:

Benjamin Daniel Berger
Attorney at Law
Barnard Iglitzin & Lavitt, LLP
18 West Mercer Street
Suite 400
Seattle, WA 98119-3971
443-797-2965
Berger@workerlaw.com

1 committees. But again, I will have to consult
2 the complaint on that. The answer could be
3 relevant to that particular argument that counsel
4 made.
5 So unless Your Honor has further questions,
6 I'll leave it at that.
7 THE COURT: Okay. Thank you.
8 MR. BERGER: Thank you.
9 MR. STAHLFELD: Excuse me, Your Honor.
10 May I just very quickly respond to something
11 which was said right there?
12 THE COURT: Very quickly.
13 MR. STAHLFELD: I took Judge Schaller's
14 oral argument. I'm looking at page 12 of what
15 she said. This was the June 13th, 2014. And
16 it's lines 13 and 14. It says,
17 "Based on all of this, I find that
18 RCW 42.17A.442, as it applies to ballot
19 title measure committees, is unconstitutional."
20 THE COURT: Okay.
21 MR. STAHLFELD: That was the finding
22 there. It's not for -- for every single purpose,
23 Your Honor. Thank you.
24 THE COURT: All right. I'm taking a
25 moment to make a determination of whether I'm

1 going to rule at this point or to take it under
2 advisement. I think I'm going to rule at this
3 point, and the prevailing party will have the
4 opportunity to present a proposed order
5 consistent with this type of ruling.
6 Of course, this is a motion to dismiss under
7 12(b)(6). So the character of the order is
8 relatively brief, because as the Court of Appeals
9 is fond of saying both officially and at social
10 occasions, they don't care what I think. I'm
11 being a little facetious if anybody's reading
12 this transcript and grading my homework. But I
13 do know that this issue has come up in some
14 contexts before. I do not know the details of
15 what was argued before, and I only know in
16 generalities what decision was made before.
17 I will say that I did not have a decision,
18 necessarily, conclusively in my head prior to
19 oral arguments. So I do appreciate the parties'
20 presentation. It's been some time since I was on
21 the rotation that fielded these types of issues,
22 three years, actually. And I believe when I left
23 this rotation some three years ago, it was with
24 these two parties standing in front of me. So --
25 of course, not the same lawyers but same

1 parties-ish. So I see how some things have
2 changed, some things do not.
3 In any event, I hope that from the court's
4 comment in oral argument, that the parties
5 understand the amount of time, frankly which I
6 did not have, but the amount of time I devoted to
7 the issues. I always enjoy quality briefing and
8 quality argument. And I think that's what we had
9 here in this matter.
10 This is an interesting issue. I said at the
11 outset, I spent quite a bit of time with my copy
12 of RCW 42.17A.765. I have a copy right here. I
13 won't say I went so far as to sleep with it under
14 my pillow, but I will say that I spent a lot of
15 time looking at it, putting it down, and then
16 looking at it again to try to assess the
17 arguments, the very different constructions that
18 each party would like the court to read into the
19 language or not read into it.
20 Essentially, the SEIU PEAF is arguing that
21 this case should be dismissed because the
22 plaintiff is not able to bring the case, because
23 it did not comply with RCW 42.17A.765(4)(a).
24 That section states, in principle part, that a
25 citizen's action may be brought only if,

1 (i) The attorney general and the
2 prosecuting attorney have failed to
3 commence an action hereunder within
4 forty-five days after the notice;
5 (ii) The person has thereafter
6 further notified the attorney general and
7 prosecuting attorney that the person will
8 commence a citizen's action within ten days
9 upon their failure to do so;
10 (iii) The attorney general and the
11 prosecuting attorney have in fact failed
12 to bring such action within ten days of
13 receipt of said second notice; and
14 (iv) The citizen's action is filed
15 within two years after the date when the
16 alleged violation occurred."
17 Both parties have described that language
18 as "clunky." I think I pushed back a little on
19 the concept that it was absolutely clear, which
20 was language used by the defendant in this case.
21 The provision that is relevant to the case before
22 the court is curious; specifically, the
23 requirement found in (4)(a)(ii),
24 "The person has thereafter further
25 notified the attorney general and

1 prosecuting attorney that the person
2 will commence a citizen's action within
3 ten days upon their failure to do so."
4 In general terms, the defendant has argued
5 that that places an affirmative duty on the
6 entity wishing to control the litigation to not
7 just provide notice to the attorney general and
8 prosecuting attorney that the person will
9 commence an action within ten days but actually
10 creates an affirmative duty for them to do so.
11 Otherwise, they do not qualify under the statute
12 to control that litigation.
13 The plaintiff here has argued that that's
14 not what it means; if anything, it's just a
15 notice provision, and the intent is really to
16 notify those entities that they have ten more
17 days to file a suit. And if the language means
18 anything, it only means that the notice must
19 provide some sense of the commencing a suit. But
20 there's no duty to actually commence a suit
21 within ten days from that language.
22 There is disagreement to some extent on the
23 application of the language in terms of creating
24 this ten-day period: Is there one ten-day period
25 with a race to the courthouse, or if as defendant

1 argues, are there two separate ten-day periods.
2 The parties disagree about that, as well.
3 Each side relies on various authorities to
4 support their view. The defendant has argued
5 that the last antecedent rule makes it very clear
6 that the ten days within (4)(a)(ii) is a
7 reference to when the citizen's action must be
8 commenced and not some sort of modification of
9 the action on the part of the attorney general or
10 prosecuting attorney, and that if that provision
11 does not require the citizen to actually file
12 within ten days, that provision makes no sense;
13 it's inconsistent with the common law principles;
14 it would be a meaningless provision; and both
15 policy and legislative history actually supports
16 it because of the nature of a potential
17 compromise between the Senate and the House where
18 they are creating this particular language.
19 On the other hand, the plaintiff says it
20 doesn't mean what defendant says it means, and
21 they support their argument with the plain
22 language, saying it's just a notice requirement;
23 there's nothing there that affirmatively creates
24 an obligation to file; and further, legislative
25 history supports the argument that this is not

1 some serious departure from what was required
2 before, which was merely a second notice to the
3 state that they had ten more days.
4 I do understand that to some extent this
5 question has been answered by a fellow colleague
6 of mine. And I said during oral argument, my
7 thoughts -- I think I said "be careful." When I
8 say that, I don't mean to be a grumpy judge about
9 that, but I only say that because at some point
10 trial courts tend to allow themselves to be
11 persuaded but don't want to be told what to do
12 from another trial court. And that certainly was
13 not the case with respect to what Judge Dixon may
14 or may not have done. I did not know what the
15 result of that was. Certainly it was clear what
16 Judge Schaller did on the constitutional issue
17 from the arguments.
18 To a great extent, whether the court even
19 goes further down the road with the
20 constitutional arguments, it is necessary to
21 address this question first. I think both sides
22 concede that a lawsuit wasn't commenced within
23 the ten-day window. I believe that's conceded.
24 I looked at the timelines.
25 So the question is really a threshold one

1 that's dispositive. If the language means what
2 SEIU PEAF says it means, the court goes no
3 further. If it means what the plaintiff says it
4 means, then the court must then proceed down the
5 path. I have been doing this a lot of years.
6 I've seen a lot of confusing, clunky language.
7 I've never really seen anything like this before
8 where there's this obligation to give notice
9 without it being clearer what that really means.
10 And does that lack of clarity, then, require this
11 court to find it ambiguous, or if so, what does
12 the legislative history say. There's a lot going
13 on here with this clunky language. And I guess I
14 will adopt that description of it.
15 First and foremost, I do find persuasive the
16 application of the last antecedent rule that is
17 urged by the defendants here in terms of what
18 the "within ten days" modifies. Very clearly, in
19 my view, you cannot read RCW 42.17A.765(4)(a)(ii)
20 as meaning anything other than that notice must
21 include an assertion that the citizen's action
22 will be commenced within ten days upon their
23 failure.
24 I think the "within ten days" cannot modify
25 anything else in a reasonable way. And so

1 although I don't hear that to be an issue of
2 sharp contention between the parties, that's a
3 result that I do find.
4 The real issue here is whether or not this
5 provision is notice only or not. If it's notice
6 only, then there's a question about whether this
7 notice complied. If it's also a legislative
8 assertion that the suit must be commenced within
9 ten days, then the court would grant the
10 defendant's motion.
11 So the resolution of that, to me, is a
12 consideration between an assumption that the
13 Legislature is going to require something
14 specific but not have that mean something versus
15 the idea that the Legislature is going to have
16 such an important provision as a requirement to
17 commence a suit that is not as clear as it could
18 be. That seems to me to be the crux of the
19 matter.
20 Ultimately, following my review of all of
21 the sources of information the parties have
22 provided to the court, together with oral
23 argument, I have concluded that it is
24 unreasonable to assume that the Legislature
25 would require such a specific notice if it did

1 not also mean what it says, which is the suit
2 must be actually commenced within the ten days.
3 It would be odd and utterly unsupportable at the
4 end of the day, in my view, to have the
5 Legislature have this specific notice be an
6 empty gesture and not mean what it says.
7 I don't believe that that is necessarily
8 inconsistent with the conclusion that
9 RCW 42.17A.765(4)(a)(iv) also has a separate
10 limitation of the two years. I'm persuaded that
11 those are not necessarily inconsistent.
12 It is not unreasonable to me that the
13 opportunity to pursue this type of case on behalf
14 of the state would have a timing mechanism
15 through which you must commence it that is
16 separate from more of a statute of limitations
17 idea for the staleness of the actual underlying
18 issues.
19 With that decision, I find that I do not
20 need to resolve what I do believe to be
21 potentially ambiguous, as to whether or not there
22 are two successive ten-day periods or just one
23 ten-day period. In fact, I am instructed by the
24 law that if I can avoid constitutional
25 determinations, I should. And I don't find that

1 I need to reach the constitutionality of this
2 provision as to these circumstances that I would
3 if I were to make a different decision on the
4 threshold decision of the notice.
5 So I am going to grant the defendant's
6 motion to dismiss. I'm also not making that
7 decision, I should say, based upon the facial
8 insufficiency of the notice as it was presented.
9 I don't think I need to do that. I'm weary of
10 that issue being raised in the reply. I'm not
11 entirely certain I would concur with plaintiff's
12 position on that in terms of whether that point
13 of the actual text of the notice in this case was
14 raised too late. I'm not sure I'm persuaded
15 necessarily. The court is forbidden from
16 considering that at this stage. But I'm also not
17 making my decision based upon that argument.
18 Mr. Stahlfeld, you are standing.
19 MR. STAHLFELD: I was going to say, one
20 of the things that I think we are supposed to
21 include in an order is the items the court
22 considered.
23 THE COURT: Right.
24 MR. STAHLFELD: And so the question
25 would be, did the court consider the declaration

1 from Mr. Iglitzin, which included that
2 information? The court said we did submit
3 (indiscernible) but then did not consider that
4 declaration in its ruling --
5 THE COURT: Right.
6 MR. STAHLFELD: -- and that would --
7 that would resolve the issue.
8 THE COURT: I think it's fair to say
9 the court considered it, but the court did not
10 base its ruling on it. Again, whether or not the
11 Court of Appeals cares about such things and
12 whether or not this transcript is designated as a
13 clerk paper or not, it's up to the parties, of
14 course. But I think it's fair to say that I did
15 not base my decision on it, but I did consider it
16 for the perspective of the text of the order.
17 Do you have any other questions,
18 Mr. Stahlfeld?
19 MR. STAHLFELD: No, Your Honor.
20 THE COURT: Mr. Berger, any questions
21 from you?
22 MR. BERGER: No, Your Honor. I do have
23 a proposed order. I don't know if you want to
24 wait for us to submit it electronically, but I do
25 have a --

1 THE COURT: I don't really want it
2 submitted electronically. If Mr. Stahlfeld is
3 prepared to view it and sign off on it, I --
4 again, this type of order, they're usually very
5 brief.
6 MR. BERGER: Your Honor, we had left
7 blank, the -- I think the items that you
8 considered beyond the initial motion, so if we
9 could write that in by hand --
10 MR. STAHLFELD: (Indiscernible).
11 MR. BERGER: -- it would be --
12 THE COURT: On what I considered beyond
13 the --
14 MR. STAHLFELD: Your Honor, I have
15 the -- I think the appropriate --
16 THE COURT: List?
17 MR. STAHLFELD: -- list here.
18 THE COURT: Just match your lists up,
19 and then it's --
20 MR. STAHLFELD: I think if we just
21 shifted this over to yours, I'll just send a
22 copy --
23 MR. BERGER: Yeah.
24 THE COURT: -- of the documents.
25 MR. BERGER: Right. Yeah.

1 THE COURT: Did the parties anticipate
2 anything further on the record, or can we go off
3 the record?
4 MR. STAHLFELD: No, Your Honor.
5 MR. BERGER: No, Your Honor.
6 THE COURT: Okay. Let's go off the
7 record.
8
9 (Conclusion of the February 8, 2019, Proceedings.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT B

RCW 42.17A.140

Date of receipt—Exceptions—Electronic filings.

(1) Except as provided in subsection (2) of this section, the date of receipt of any properly addressed application, report, statement, notice, or payment required to be made under the provisions of this chapter is the date shown by the post office cancellation mark on the envelope of the submitted material. The provisions of this section do not apply to reports required to be delivered under RCW **42.17A.265** and **42.17A.625**.

(2) When a report is filed electronically with the commission, it is deemed to have been received on the file transfer date. The commission shall notify the filer of receipt of the electronically filed report. Such notification may be sent by mail, facsimile, or electronic mail. If the notification of receipt of the electronically filed report is not received by the filer, the filer may offer his or her own proof of sending the report, and such proof shall be treated as if it were a receipt sent by the commission. Electronic filing may be used for purposes of filing the special reports required to be delivered under RCW **42.17A.265** and **42.17A.625**.

[**2010 c 204 § 308; 1999 c 401 § 10; 1995 c 397 § 18; 1983 c 176 § 2;** 1973 c 1 § 42 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.420**.]

FILED
Court of Appeals
Division II
State of Washington
3/21/2019 1:36 PM

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 SECOND STATEMENT OF ADDITIONAL AUTHORITIES

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

Pursuant to RAP 10.8, Petitioner SEIU 775 hereby identifies the following additional authority and the issues to which it corresponds:

1. The March 19, 2019, Order Denying Motion for Reconsideration in *Freedom Foundation v. Service Employees International Union Political Education and Action Fund*, No. 18-2-01731-34 (Thurston Cty. Feb. 8, 2019) (Price, J.). The order corresponds to the Superior Court order referenced on page 4 of Petitioner's Reply in Support of Discretionary Review and on pages 1-2 on the Supplemental Appendix attached thereto. The order is relevant to the issues of (1) whether any other court has interpreted the statutory provision in question as Petitioner urges and (2) whether the Superior Court's reasoning in this case manifests obvious or probable error. A copy of the order is attached hereto as Exhibit A.

RESPECTFULLY SUBMITTED this 21st day of March, 2019.

By: _____

Dmitri Iglitzin, WSBA No. 1767
Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Iglitzin@workerlaw.com

Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com

Counsel for Petitioner/Defendant SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2019, I caused the foregoing SECOND STATEMENT OF ADDITIONAL AUTHORITIES to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Dmitri Iglitzin, WSBA No. 17673

Exhibit A

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY	
FREEDOM FOUNDATION , Plaintiff/Petitioner, vs. SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION AND ACTION FUND, Defendant/Respondent.	No. 18-2-01731-34 ORDER DENYING MOTION FOR RECONSIDERATION ☐ ***Clerk's Action Required***

This matter comes before the Court upon Plaintiff's Motion for Reconsideration of the Court's February 8, 2019, order of dismissal.

Following review of the pleadings and being fully advised herein, the Court determines that Plaintiff's Motion presents arguments that are either unpersuasive and/or could have been brought earlier. Accordingly, the Court denies the Motion for Reconsideration.

SO ORDERED.

Dated: 19th of March 2019

Judge Erik D. Price

Order Denying Reconsideration

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W., Bldg 2
Olympia, WA 98502
(360) 786-5560

BARNARD IGLITZIN & LAVITT

March 21, 2019 - 1:36 PM

Transmittal Information

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

The following documents have been uploaded:

- 527260_Other_20190321133358D2396746_7067.pdf
  This File Contains:
  Other - Statement of Additional Authorities
  The Original File Name was 2019 03 21 Statement of Additional Authorities_Final.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
- berger@workerlaw.com
- franco@workerlaw.com
- jmatheson@freedomfoundation.com
- lawyer@stahlfeld.us
- owens@workerlaw.com
- robbins@workerlaw.com
- sphillips@freedomfoundation.com
- woodward@workerlaw.com

Comments:

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Dmitri L. Iglitzin - Email: iglitzin@workerlaw.com (Alternate Email:)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190321133358D2396746

FILED
Court of Appeals
Division II
State of Washington
4/15/2019 4:22 PM

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 STATEMENT OF ADDITIONAL AUTHORITY

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

Pursuant to RAP 10.8, Petitioner SEIU 775 respectfully submits the following additional authority, and the issues to which it corresponds:

1. The April 12, 2019, Order Granting Defendant's Motion for Judgment on the Pleadings in *Freedom Found. v. Teamsters 117 Segregated Fund*, 17-2-06578-34, Thurston County Superior Court (Apr. 12, 2019) (Price, J.). The order is relevant to the issues of (1) whether any other court has interpreted the statutory provision in question as Petitioner urges and (2) whether the Superior Court's reasoning in this case manifests obvious or probable error. A copy of the order is attached hereto as Exhibit A.

RESPECTFULLY SUBMITTED this 15th day of April, 2019.

By:

Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com

Counsel for Petitioner SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2019, I caused the foregoing STATEMENT OF ADDITIONAL AUTHORITY to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Benjamin Berger, WSBA No. 52909

EXHIBIT A

17-2-06578-34
ORGSJ 113
Order Granting Summary Judgment
5345530

☐ Expedite
☒ No hearing set
☐ Hearing is set
Date:
Time:
Judge/Calendar: Price

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2019 APR 12 AM 11:19

Linda Myhre Enlow
Thurston County Clerk

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. TEAMSTERS LOCAL 117 SEGREGATED FUND, an IRS 527(f)(3) political organization; TEAMSTERS LOCAL UNION NO. 117, an IRS 501(c)(5) labor organization; John Does 1-10 , Defendants.	No. 17-2-06578-34 ~~[PROPOSED]~~ **ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS** *Clerk's Action Required*

This matter came before the Court on Defendant Teamsters Local 117's motion to dismiss all claims against it pursuant to CR 12(c). The Court heard the oral argument of counsel on ~~March 29~~ April 12, 2019, and also considered the following when reaching its decision:

1. Defendant Teamsters Local 117's Motion for Judgment on the Pleadings;
2. Plaintiff's Brief in Opposition to Defendant Teamsters Local Union No. 117's Motion for Judgment on the Pleadings;
3. Declaration of Robert Bouvatte in Support of Plaintiff's Brief in Opposition to Defendant Teamsters Local Union No. 117's Motion for Judgment on the Pleadings;

18 WEST MERCER ST., STE. 400
SEATTLE, WASHINGTON 98119
TEL 800.238.4231 | FAX 206.378.4132
BARNARD IGLITZIN & LAVITT LLP

4. Defendant Teamsters Local 117's Reply in Support of its Motion for Judgment on the Pleadings;

5. Declaration of Darin Dalmat in Support of Defendant Teamsters Local 117's Reply in Support of its Motion for Judgment on the Pleadings.

Being fully advised, the Court hereby rules as follows:

1. Defendant's motion for judgment on the pleadings is GRANTED;
2. Judgment is ~~AWARDED~~ ENTERED to Defendant on all claims;
3. All claims against Defendant are hereby DISMISSED with prejudice.

(as) on the bases set forth in the Court's ruling of February 8, 2019, Attached as Exhibit B to the Defendant's Motion for judgment on the pleadings, as well as the Court's oral ruling.

It is so ORDERED this 12 day of April, 2019.

~~The Honorable~~ Erik D. Price
Thurston County Superior Court Judge

Presented by:

Dmitri Iglitzin, WSBA No. 17673
Laura Ewan, WSBA No. 45201
Darin Dalmat, WSBA No. 51384
Melissa Greenburg, WSBA No. 54132
BARNARD IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
(206) 257-6003
(206) 257-6038
iglitzin@workerlaw.com
ewan@workerlaw.com
dalmat@workerlaw.com
greenberg@workerlaw.com

Attorneys for Teamsters Local No. 117

for the Plaintiff

18 WEST MERCER ST., STE. 400 BARNARD
SEATTLE, WASHINGTON 98119 IGLITZIN &
TEL 800.238.4231 | FAX 206.378.4132 LAVITT LLP

BARNARD IGLITZIN & LAVITT

April 15, 2019 - 4:22 PM

Transmittal Information

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

The following documents have been uploaded:

- 527260_Other_20190415161532D2181448_2283.pdf
  This File Contains:
  Other - Statement of Additional Authority
  The Original File Name was 2019 04 15_Stmt of Add Auth_FINAL.pdf

A copy of the uploaded files will be sent to:

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

Comments:

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Danielle Elizabeth Franco-Malone - Email: franco@workerlaw.com (Alternate Email:)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190415161532D2181448

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Respondent, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, a labor organization, Petitioner, DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer, Defendants.	No. 52726-0-II RULING DENYING REVIEW

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

FACTS

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

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

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

ANALYSIS

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

> (1) The superior court has committed obvious error which would render further proceedings useless; [or]
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo of substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2)

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

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

RAP 2.3(b)(1)

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

> (4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.
>
> (a) This citizen action may be brought only if:
>
> (i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty five days after the notice;
>
> (ii) The person has thereafter further notified the attorney general and prosecuting attorney *that the person will commence a citizen's action within ten days upon their failure to do so;*
>
> (iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and
>
> (iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(Emphasis added.)

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

The superior court agreed with Freedom Foundation:

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

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

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

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

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

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

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

CONCLUSION

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

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

DATED this 2nd day of MAY, 2019.

Aurora Bearse
Court Commissioner

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

FILED
Court of Appeals
Division II
State of Washington
6/3/2019 1:49 PM

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 MOTION TO MODIFY COMMISSIONER'S RULING

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

TABLE OF CONTENTS

I. INTRODUCTION _____ 1

II. IDENTITY OF MOVING PARTY _____ 2

III. STATEMENT OF RELIEF SOUGHT _____ 2

IV. RELEVANT FACTS _____ 2

V. GROUNDS FOR RELIEF AND ARGUMENT _____ 5

A. STANDARDS OF REVIEW FOR MOTIONS TO MODIFY AND FOR DISCRETIONARY REVIEW _____ 5

1. Motion to Modify_____ 5

2. Motion for Discretionary Review _____ 6

B. 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 STATE OFFICERS' FAILURE TO INITIATE THEIR OWN ENFORCEMENT ACTIONS. _____ 6

1. The Statute's Plain Language Requires a Citizen Complainant to Promise to File Suit "Within Ten Days" of the State Officers' Failure to Act._____ 7

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._____ 13

C. THE TRIAL COURT'S RULING RAISES THE SPECTER OF A USELESS LAWSUIT. _____ 17

D. THE TRIAL COURT RULING SUBSTANTIALLY LIMITS SEIU 775'S FREEDOM TO ACT. _____ 19

VI. CONCLUSION_____ 20

TABLE OF AUTHORITIES

Page(s)

Cases

Abbenante v. Giampietro,
75 R.I. 349, 66 A.2d 501 (R.I. 1949) 14

Beverly Health & Rehab. Servs., Inc. v. N.L.R.B.,
317 F.3d 316 (D.C. Cir. 2003)..... 15

Douchette v. Bethel Sch. Distr. No. 403,
117 Wn.2d 805, 818 P.2d 1362 (1991)..... 18

Entrepreneur, Ltd. v. Yasuna,
498 A.2d 1151 (D.C. 1985) 15

In re Estate of Black,
153 Wn.2d 152, 102 P.3d 796 (2004) 9

State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n ("EFF"),
111 Wn. App. 586, 49 P.3d 894 (2002) 9, 10, 11

Eyman v. Wyman,
191 Wn.2d 581, 424 P.3d 1183 (2018)..... 8

Flowers v. Carville,
310 F.3d 1118 (9th Cir. 2002) 8

Hartley v. State,
103 Wn.2d 768, 698 P.2d 77 (1985) 17

Kilian v. Atkinson,
147 Wn.2d 16, 50 P.3d 638 (2002) 9

LaGuardia Assoc. v. Holiday Hospitality Franchising, Inc.,
92 F. Supp. 2d 119 (E.D.N.Y. 2000)..... 15, 16

Ohnemus v. State,
195 Wn. App. 135, 379 P.3d 142 (2016)..... 6

In re Petersen,
138 Wn.2d 70, 980 P.2d 1204 (1999) 6

Shannon v. State,
110 Wn. App. 366, 40 P.3d 1200 (2002) 18

State v. Contreras,
124 Wn.2d 741, 880 P.2d 1000 (1994) 13

West v. Wash. State Ass'n of Dist. & Mun. Court Judges,
190 Wn. App. 931, 361 P.3d 210 (2015) 6

Statutes

29 U.S.C. § 626(e) 13

33 U.S.C. § 1319(g)(6)(b)(ii) 13

42 U.S.C. § 2000e-5(f)(1) 13

FCPA ..... *passim*

National Labor Relations Act 15

RCW 42.17.765(4)(a)(ii) 8

RCW 42.17A.765 ..... 1, 4

RCW 42.17A.765(4) 7, 16

RCW 42.17A.765(4)(a) 7, 9, 18

RCW 42.17A.765(4)(a)(i) 7

RCW 42.17A.765(4)(a)(ii) ..... *passim*

RCW 42.17A.765(4)(a)(iii) 8, 11

RCW 42.17A.765(4)(a)(iv) 1

RCW 42.17A.775(3) 7

Other Authorities

First Amendment 20

RAP 2.3 6

RAP 2.3(a) 6

RAP 2.3(b) 1, 5, 6

RAP 2.3(b)(1)
..... 17, 18, 20

RAP 2.3(b)(2)'s 20

RAP 17.7 ..... 2, 5

I. INTRODUCTION

This case turns on the proper construction of the citizen suit provisions contained in *former* RCW 42.17A.765.[1] In the proceedings below, the superior court patently erred in construing this provision. And while the Commissioner of this Court recognized that the trial court *may* have erred, she incorrectly held that the error was not sufficiently obvious to meet the requirements of RAP 2.3(b). As a result, SEIU 775 asks this Court to properly construe the statute and accept discretionary review.

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 officers. Therefore, no reading can be accepted which shuffles the phrase "within ten days" to the end of the clause, as the Foundation requests and as the Commissioner implies is possible.

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

[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 App. at 153.

will file suit "within ten days" upon the occurrence of a condition precedent? May the party, upon the condition coming to pass, 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 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.

II. IDENTITY OF MOVING PARTY

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

III. STATEMENT OF RELIEF SOUGHT

SEIU 775 seeks an order from this Court pursuant to RAP 17.7 granting discretionary review of the superior court's November 9, 2018, order denying SEIU 775's Motion to Dismiss Plaintiff/Respondent Freedom Foundation's citizen action. Review is sought specifically concerning the portion of the trial court's order holding that the citizen action is not procedurally barred by *former* RCW 42.17A.765(4)(a)(ii).

IV. RELEVANT FACTS

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.

On December 14, 2016, the Foundation purportedly submitted a letter and notice to the Washington Attorney General and relevant county prosecutors (together, the "State officers") alleging that SEIU 775 was a political committee within the meaning of the FCPA and had 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. These 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, the Foundation purportedly 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.

On September 8, 2017, the Foundation purportedly submitted a letter and notice to the State officers 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 specifically for the month of June 2016. *Id*. at 33 ¶ 2 and 35 ¶ 11. The Foundation purportedly submitted a second notice concerning this allegation on October 26, 2017. *Id*. at 33 ¶ 2 and 35 ¶ 12. Again, no State officer 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.[2] The complaint was filed 352 days after the Foundation purported to send its second notice to the state officers concerning its December 16, 2016, allegations and 86 days after the Foundation purported to send its second notice to the same officers concerning its September 8, 2017, allegations.

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

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

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.

While SEIU 775's Motion for Discretionary Review was pending, Judge Erik Price of the Thurston County Superior Court interpreted the FCPA in the same manner as here urged by SEIU 775 in two separate actions filed by the Foundation against different union defendants. *See* Statements of Additional Authorities.

On May 2, 2019, the Commissioner of this Court issued a Ruling Denying Review. In her ruling, the Commission acknowledged that the authorities presented by SEIU 775 "may support that the superior court erred" but ultimately found them "insufficient to demonstrate that [the superior court] obviously erred." *See* Ruling Denying Review at 5. SEIU 775 timely moves for this Court to modify the Commissioner's ruling and find that discretionary review is warranted under RAP 2.3(b).

V. GROUNDS FOR RELIEF AND ARGUMENT

A. Standards of Review for Motions to Modify and for Discretionary Review

1. Motion to Modify

In explaining the discretionary review process, Washington's Supreme Court has stated that "[a]n appellant who makes a motion to

modify pursuant to RAP 17.7 receives, as a matter of right, de novo review of the commissioner's ruling by a 3–judge panel." *In re Petersen*, 138 Wn.2d 70, 89, 980 P.2d 1204 (1999) (quoting *State v. Rolax*, 104 Wn.2d 129, 133, 702 P.2d 1185 (1985)). Accordingly, the Court evaluates the instant Motion under the same standard applicable to SEIU 775's initial Motion for Discretionary Review.

2. Motion 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.[3]

B. 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 State Officers' Failure to Initiate Their Own Enforcement Actions.

The FCPA – in both its current and prior forms – establishes a

[3] 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 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).

"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 Requires a Citizen Complainant to Promise to File Suit "Within Ten Days" of the State Officers' 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 to governmental inaction regarding the citizen's complaint. 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

[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 survived intact 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).

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).

Two things are clear on the face of subsection (ii): (1) the complainant must warn that *he* – not the State officers – will bring an action specifically within "within ten days" of a condition precedent coming to pass; and (2) the citizen's 10-day period starts upon "their" – the State officers' – "failure to do so," i.e., to commence an FCPA action.

(i) *The "action" to be brought within 10 days is the citizen's.*

With respect to point (1), the 10-day limitation applies to the citizen, not the State officers, 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 State officers' 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 prepositional 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") (internal quotation marks omitted).

In ruling on this very issue in a different action, Judge Price agreed that the last antecedent rule must apply, finding it "[v]ery clear[]" that one "cannot read [*former*] RCW 42.17A.765(4)(a)(ii) as meaning anything other than that notice must include an assertion that the citizen's action will be commenced within ten days upon their failure." Feb. 25, 2019 Statement of Additional Authority, Exhibit A at 10. Thus, the term "within ten days" "cannot modify anything else in a reasonable way." *Id*.

And although no appellate 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 second notice must make a representation about when the *citizen* will file suit.

The Commissioner's ruling is contradictory on this point because, although she later acknowledged that "subsection 4(a)(ii) requires a complainant to inform the prosecuting attorney and [AG] that the citizen will file suit 'within ten days,'" she initially indicated that subsection (ii) can "reasonably [be] interpreted as a notice formality, which…reminds the prosecuting attorney and [AG] to act within 10 days after receiving the second notice to retain their right to sue." Ruling Denying Review at 5. However, it is impossible for the second notice to serve as a reminder to the State officers about *their* time to act when – as even the Commissioner agrees – the notice must actually inform the officers about when the *citizen* will act.

(ii) *The citizen's window is triggered by the State officers' "failure" to file an enforcement action within their own 10-day window.*

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 (ii) first refers to the citizen's "commence[ment]" of an "action." *Former* RCW 42.17A.765(4)(a)(ii). Bringing such suit is made contingent on "their failure to do so." *Id*. Because of the initial reference to an "action" and the use of the plural "their," which recalls the notice's addressees, the only reasonable way to construe the phrase "their failure to do so" at the end of the sentence is as an allusion to the State officers' own opportunity to bring an action against the alleged violator. Paragraph (4)(a)(iii) then defines what it means for an officer to "fail" to bring an action. This subsection provides the State officers ten days from their receipt of the citizen's second notice to bring an enforcement action. *Former* RCW 42.17A.765(4)(a)(iii). Accordingly, the officers' "failure" does not mean refraining from *ever* suing an alleged violator, but refraining specifically within ten days of receiving the citizen's second notice. Paragraph 4(a)(ii)'s limitation on the time to file a citizen suit "upon their failure" thus means that the citizen must sue within ten days following the expiration of the officers' own ten-day period to act.[5]

[5] 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

Several federal statutes also require plaintiffs to file suit within a certain number of days following the end of an administrative proceeding, notwithstanding the existence of a separate statutory limitations period. *See, e.g.*, 42 U.S.C. § 2000e-5(f)(1) (ADA or Title VII plaintiff must bring suit within 90 days of EEOC's termination of investigation); 29 U.S.C. § 626(e) (same for ADEA plaintiff); 33 U.S.C. § 1319(g)(6)(b)(ii) (citizen must file suit between 60 and 120 days of providing administrative notice of intent to sue in order for Clean Water Act suit to proceed in face of concurrent government enforcement action).

The parties do not dispute that the Foundation did not file its citizen action within ten days of the State officers 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 775's reading. For these reasons, the trial court's failure to hold the Foundation's

---

taken by the Court of Appeals in the past. *See EFF*, 111 Wn. App. at 604. 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 officers' 10-day opportunity to do so. Under either interpretation, the instant lawsuit was untimely filed.

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 *former* RCW 42.17A.765(4)(a)(ii) provides that the "action" to be filed "within ten days" of the State 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 State 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 officers fail to act. *See* App. at 120-21 at 54:17-55:3.[6] Implicit in this reasoning is the view that a 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

[6] 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 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."

second notice states that he will file suit within ten days of the officers' failure to act or merely that he will file suit at some indefinite point. 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 State officers to act renders the phrase "within ten days" mere surplusage.

Again, in the separate proceedings, Judge Price cogently explained why this is the case:

> [I]t is unreasonable to assume that the Legislature would require such a specific notice if it did not also mean what it says, which is the suit must be actually commenced within the ten days. It would be odd and utterly unsupportable at the end of the day, in my view, to have the Legislature have this specific notice be an empty gesture and not mean what it says.

Feb. 25, 2019 Statement of Additional Authority, Exhibit A at 6-7.

In her order, the Commissioner did not attempt to reconcile the second notice's acknowledged content with the rule against 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 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 A.2d 501 (R.I.

1949) (affirming dismissal of trespass and ejectment action where landlord accepted tenant's payment at old rate as credit toward new rent because landlord had 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); *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"); *cf. 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).

The Commissioner recognized that these cases can be read to "support that [a] citizen's failure to act as stated means that he or she waives the right to sue," which in turn "may support that the superior court erred." Ruling Denying Review at 5. This is an understatement. The facts

of the above cases are close analogues to the facts at bar and the waiver principle articulated therein is equally applicable here. That these cases are, as the Commissioner observes, "out-of-state," *id*., is a function only of the fairly unusual circumstances at play – a statutory prerequisite that a prospective plaintiff give notice of his future actions, coupled with his failure to consummate those promised actions. But there is no reason to think that Washington would buck the trend established by those jurisdictions that have commented on the relevant legal question.

Upholding this principle is all the more critical here, 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 State's credibility.

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 State officers 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.

C. The Trial Court's Ruling Raises the Specter of a Useless Lawsuit.

The second prong of RAP 2.3(b)(1) is satisfied 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.[7]

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

[7] The Commissioner did not specifically comment on whether SEIU 775 had satisfied this prong, but appears to have accepted that it did, because she then proceeded to address the question of "obvious error." *See* Ruling Denying Review at 3.

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); *Shannon v. State*, 110 Wn. App. 366, 368-69, 40 P.3d 1200 (2002) (also finding further proceedings "useless" in light of trial court's "obvious error" on procedural question).

As in *Douchette* and *Shannon*, 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 State 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

[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

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 (1) whether labor unions lack a primary purpose to engage in political activity as a matter of law or (2) whether an entity's political committee status may be evaluated on a month-to-month basis. *See* App. at 48-50.

D. The Trial Court Ruling Substantially Limits SEIU 775's Freedom to Act.

Unlike with RAP 2.3(b)(1), the Commissioner specifically found that SEIU 775 had not satisfied RAP 2.3(b)(2)'s "effects prong." Ruling Denying Review at 2-3. The Commissioner is incorrect because SEIU 775's freedom has been limited. 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. 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 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. Relatedly, the

---

extensive and burdensome discovery on this issue, the propriety of which may necessitate additional motion practice.

Foundation's anticipated discovery requests, in addition to being intrusive and burdensome, *see supra*, are also likely to demand information about the content and context of SEIU 775's First Amendment activities. This will also tend to chill the exercise of expressive and associational rights.

These results are particular inequitable here because the administrative review process ended with decisions by the State officers to *not* pursue an enforcement action. Indeed, the PDC and attorney general issued written opinions finding and explaining why the Foundation's claims lacked merit. *See* App. at 1-12. While the FCPA certainly contemplates that a citizen may challenge the State officers' findings by filing a separate lawsuit, it does not contemplate allowing the citizen to sit on its administratively-rejected claims for up to two years. Yet this is precisely what the trial court's order accomplishes.

VI. CONCLUSION

For the foregoing reasons, SEIU 775 respectfully requests that this Court grant its Motion to Modify the Commissioner's Ruling.

RESPECTFULLY SUBMITTED this 3rd day of June, 2019.

By: _____

Dmitri Iglitzin, WSBA No. 1767
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Iglitzin@workerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2019, I caused the foregoing MOTION TO MODIFY COMMISSIONER'S RULING to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com

Dmitri Iglitzin, WSBA No. 17673

BARNARD IGLITZIN & LAVITT

June 03, 2019 - 1:49 PM

Transmittal Information

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

The following documents have been uploaded:

- 527260_Motion_20190603134719D2232155_7680.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was 2019 06 03_MOT to modify Comm_FINAL.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
- berger@workerlaw.com
- franco@workerlaw.com
- jmatheson@freedomfoundation.com
- lawyer@stahlfeld.us
- owens@workerlaw.com
- robbins@workerlaw.com
- sphillips@freedomfoundation.com
- valenzuela@workerlaw.com

Comments:

Motion to Modify Commissioner's Ruling

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Dmitri L. Iglitzin - Email: iglitzin@workerlaw.com (Alternate Email: woodward@workerlaw.com)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190603134719D2232155

18-2-00454-34
ORSP 90
Order for Stay of Proceedings
5961590

3

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2019 JUN 28 AM 10: 25

Linda Myhre Enlow
Thurston County Clerk

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is set
Date: 6/28/2019
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 **[~~PROPOSED~~] ORDER GRANTING DEFEDANT SEIU 775'S MOTION TO STAY**

THIS MATTER came before the undersigned Judge of the above-entitled Court on Defendant SEIU 775's motion to stay. The Court having heard argument on the matter on June 28, 2019, and having considered the pleadings filed in this matter, including the following:

1. SEIU 775's motion to stay and the supporting declaration and exhibits of Benjamin Berger thereto;
2. Freedom Foundation's opposition, and the supporting declarations and exhibits thereto;
3. SEIU 775's reply, including all supporting papers, if any; and
4. _____.

IT IS HEREBY ORDERED that SEIU 775's Motion to ~~Dismiss~~ Stay is hereby GRANTED ~~and that Plaintiff's claims against it are DISM~~ISSED.

18 WEST MERCER ST., STE. 400 BARNARD
SEATTLE, WASHINGTON 98119 IGLITZIN &
TEL 800.238.4231 | FAX 206.378.4132 LAVITT LLP

DATED this 28 day of June 2019.

The Honorable James Dixon

Presented by:

Dmitri Iglitzin, WSBA No. 17673
Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
(206) 257-6003
(206) 257-6038
(206) 257-6006
iglitzin@workerlaw.com
robbins@workerlaw.com
franco@workerlaw.com
berger@workerlaw.com

18 WEST MERCER ST., STE. 400 BARNARD
SEATTLE, WASHINGTON 98119 IGLITZIN &
TEL 800.238.4231 | FAX 206.378.4132 LAVITT LLP

DECLARATION OF SERVICE

I, Genipher Owens, declare under penalty of perjury under the laws of the State of Washington, that on the date set forth below I served the foregoing document listed, in the manner noted on the following parties:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
James G. Abernathy Eric R. Stahlfeld c/o Freedom Foundation PO Box 552 Olympia, WA 98507 jabernathy@myfreedomfoundation.com Estahlfeld@myfreedomfoundation.com KNelsen@myfreedomfoundation.com	☐ Hand Delivery ☐ Certified Mail ☐ Facsimile ☒ E-mail *per agreement of counsel* ☐ U.S. Mail ☐ E-Service

DATED this 14th day of June, 2019 at Seattle, Washington.

By: _____
Genipher Owens, Paralegal

18 WEST MERCER ST., STE. 400 BARNARD
SEATTLE, WASHINGTON 98119 IGLITZIN &
TEL 800.238.4231 | FAX 206.378.4132 LAVITT LLP

FILED
Court of Appeals
Division II
State of Washington
7/1/2019 4:35 PM

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 STATEMENT OF ADDITIONAL AUTHORITY

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

Pursuant to RAP 10.8, Petitioner SEIU 775 respectfully submits the following additional authority, and the issues to which it corresponds: The June 28, 2019, Order Granting Necessary Party SEIU 775's Motion for Judgment on the Pleadings in *Freedom Found. v. Jay Inslee, et al*, case No. 18-2-02904-34, Thurston County Superior Court (Jun. 28, 2019) (Murphy, J.).

The order is relevant to the issues of (1) whether any other court has interpreted the statutory provision in question as petitioner urges and (2) whether the superior court's reasoning in this case manifests obvious or probable error. A copy of the order is attached hereto as Exhibit A.

RESPECTFULLY SUBMITTED this 1st day of July, 2019.

By: _____

Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com

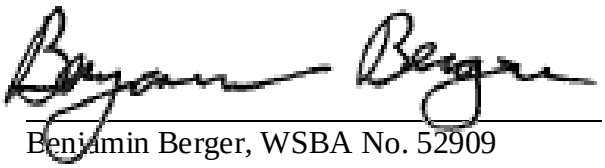
Counsel for Petitioner SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2019, I caused the foregoing STATEMENT OF ADDITIONAL AUTHORITY to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com



Benjamin Berger, WSBA No. 52909

EXHIBIT A

☐ Expedite
☐ No hearing set
☒ Hearing is set
Date: June 28, 2019
Time: 9:00 A.M.
Judge/Calendar: Hon. Carol Murphy – Dispositive motion

FILED
JUN 28 2019
Superior Court
Linda Myhre Enlow
Thurston County Clerk

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. JAY INSLEE, Governor of the State of Washington, and the STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendants, SERVICE EMPLOYEES INTERNATIONAL UNION 775, an unincorporated Washington association, Possibly interested party.	NO. 18-2-02904-34 **[~~PROPOSED~~] ORDER ~~DENYING~~ GRANTING SEIU 775'S MOTION FOR JUDGMENT ON THE PLEADINGS**

This matter came before the Court on the date below pursuant to SEIU 775's Motion for Judgment on the Pleadings. Plaintiff Freedom Foundation was represented by Eric Stahlfeld. SEIU 775 was represented by ~~Dmitri Iglitzin~~. Ben Berger and Defendants by Margaret McLean.

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

The Court having considered the following:

1. Freedom Foundation's Complaint for Civil Penalties and Injunctive Relief for Past and Ongoing Violations of RCW 42.17A;
2. State Defendant's Answer to Complaint;
3. ~~SEIU 775 did not file an Answer.~~ CM
4. SEIU 775's Motion for Judgment on the Pleadings;
5. State Defendant's Response to SEIU 775's Motion for Judgment on the Pleadings;
6. Plaintiff Freedom Foundation's Response;
7. Declaration of Robert Bouvatte in Opposition to SEIU 775's Motion for Judgment on the Pleadings;
8. SEIU 775's Reply in Support of the Motion for Judgment on the Pleadings;
9. Declaration of Ben Berger in Support of SEIU 775's Reply in Support of the Motion for Judgment on the Pleadings
10. _____;
11. _____;

and the argument herein, and the court being otherwise being fully advised on the matter herein, now, therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that SEIU 775's Motion for Judgment on the Pleadings should be and hereby is ~~DENIED~~. GRANTED MCM BB CM

DONE IN OPEN COURT this 28th day of June, 2019.

Carol Murphy

THE HONORABLE CAROL MURPHY
SUPERIOR COURT JUDGE

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

Presented by:

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

Approved as to Form by:

DMITRI IGLITZIN, WSBA # 17673
DANIELLE FRANCI-MALONE #40979
BENJAMIN BERGER #52909

Counsel for SEIU 775

Margaret C. McLean #27538
Asst Attorney General
Atty for State of WA

BARNARD IGLITZIN & LAVITT

July 01, 2019 - 4:35 PM

Transmittal Information

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

The following documents have been uploaded:

- 527260_Other_20190701163304D2780350_2286.pdf
  This File Contains:
  Other - Statement of Additional Authority
  The Original File Name was 2019 07 01_Stmt of Add Auth_FINAL.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
- franco@workerlaw.com
- iglitzin@workerlaw.com
- jmatheson@freedomfoundation.com
- lawyer@stahlfeld.us
- robbins@workerlaw.com
- sphillips@freedomfoundation.com
- valenzuela@workerlaw.com
- woodward@workerlaw.com

Comments:

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Benjamin Daniel Berger - Email: berger@workerlaw.com (Alternate Email: owens@workerlaw.com)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190701163304D2780350

FILED
Court of Appeals
Division II
State of Washington
7/22/2019 2:23 PM

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 STATEMENT OF ADDITIONAL AUTHORITY

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
18 West Mercer Street, Suite 400
Seattle, WA 98119

Pursuant to RAP 10.8, Petitioner SEIU 775 respectfully submits the following additional authority, and the issues to which it corresponds: an excerpt of a hearing transcript recording Judge Carol Murphy's June 28, 2019 oral ruling granting Necessary Party SEIU 775's Motion for Judgment on the Pleadings in *Freedom Found. v. Jay Inslee, et al*, case No. 18-2-02904-34, Thurston County Superior Court (Jun. 28, 2019) (Murphy, J.).

The order is relevant to the issues of (1) whether any other court has interpreted the statutory provision in question as petitioner urges and (2) whether the superior court's reasoning in this case manifests obvious or probable error. A copy of the order is attached hereto as Exhibit A.

RESPECTFULLY SUBMITTED this 22nd day of July, 2019.

By: _____

Jennifer L. Robbins, WSBA No. 40861
Danielle Franco-Malone, WSBA No. 40979
Benjamin Berger, WSBA No. 52909
BARNARD IGLITZIN & LAVITT LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Robbins@workerlaw.com
Franco@workerlaw.com
Berger@workerlaw.com

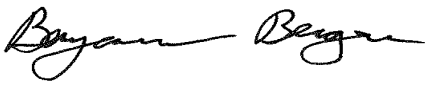
Counsel for Petitioner SEIU 775

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2019, I caused the foregoing STATEMENT OF ADDITIONAL AUTHORITY to be filed via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

James G. Abernathy
jabernathy@freedomfoundation.com

Eric R. Stahlfeld
Estahlfeld@freedomfoundation.com



Benjamin Berger, WSBA No. 52909

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

FREEDOM FOUNDATION, a Washington nonprofit organization in the name of the STATE OF WASHINGTON, Plaintiffs, vs. JAY INSLEE, Governor of the STATE OF WASHINGTON, et al, Defendants, SERVICE EMPLOYEES INTERNATIONAL UNION 775, an unincorporated Washington association, Possible Interested Parties.	NO. 18-2-02904-34

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on June 28, 2019, the above-entitled and numbered cause came on for motion hearing before the HONORABLE CAROL MURPHY, judge of Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5570
davidsc@co.thurston.wa.us

1 A P P E A R A N C E S

2

3 For the Plaintiff: ERIK R. STAHLFELD
Attorney at Law
4 Freedom Foundation
PO Box 552
5 Olympia, WA 98507

6 For the Defendant: MARGARET C. McLEAN
(Inslee, et al) Assistant Attorney General
7 Attorney General of Washington
Labor & Personnel Division
8 7141 Cleanwater Drive SW
Olympia, WA 98504-0145
9

10 For SEIU: BENJAMIN BERGER
DANIELLE FRANCO-MALONE
11 Attorneys at Law
Barnard Iglitzin & Lavitt LLP
12 18 West Mercer Street, Suite 400
Seattle, WA 98119
13

14

15

16

17

18

19

20

21

22

23

24

25

1 quite so sure after reading that case that I still
2 do, but from what I can tell, it looked exactly like
3 the situation we have right here, and the U.S.
4 Supreme Court said this is just simply not an
5 appropriate use of the last antecedent rule and
6 refused to apply it because you get nonsensical
7 results, and that is in fact what I think you get
8 when you follow the last antecedent rule here.
9 Thank you.
10 THE COURT: Thank you. The Court is prepared
11 to issue a ruling at this time on the motion for
12 judgment on the pleadings.
13 The Court is first going to address the procedural
14 question of whether SEIU is an appropriate moving
15 party here, and the Court believes that under the
16 facts of this case it is appropriate to allow SEIU to
17 make this motion. I did review the authorities for
18 this question, and I did not find something that was
19 really satisfactory to me that was applicable to this
20 particular situation. The Court understands that the
21 rules generally do not allow someone completely
22 unrelated to the case to make a motion and to have
23 the Court hear that, but in this case SEIU has been
24 on the pleadings of this case since it was filed, and
25 that was done by the plaintiff. The plaintiff did

1 refer to SEIU as a necessary party, and SEIU has been
2 treated like a party throughout these proceedings.
3 Now, it may be that that was because of the
4 expectation that SEIU would move to intervene, and
5 that has not been done. However, the Court finds
6 that under the facts of this case the Court is not
7 going to strike the motion simply because it was
8 filed by SEIU, especially in light of the defendant's
9 agreement with the motion which essentially
10 incorporated the motion completely and had no
11 differentiation between the defendant's position as
12 to this motion and the position of SEIU.
13 Moving to the merits of the motion, the Court is
14 determining that the outcome here is dictated on the
15 basis of the principles of statutory construction,
16 and in interpreting a statute, which is something
17 this Court does often, it is not unusual for this
18 Court to have different parties argue that the
19 statute is plain on its face and should be
20 interpreted in completely contradictory ways. That
21 happens fairly often actually in this court where the
22 parties argue that their version of the statute is
23 clear on its face, even though it's different than
24 what another attorney is arguing is clear on its
25 face.

1 In this particular situation, I believe that it is
2 appropriate to interpret the statute considering many
3 of the rules of statutory construction, including
4 reading all of the provisions in their context but
5 not necessarily considering outside sources. It is
6 clear, to me, that the provisions at issue here are
7 not a model of clarity, and that, again, is not
8 unusual. But based upon the Court's review of the
9 principles of statutory construction, I believe that
10 the position of SEIU and the defendant is more
11 persuasive and is the appropriate way to interpret
12 the statutes at issue, again, in the context of all
13 of the subsections, including (i) through (iv).
14 Therefore, the Court is granting the motion for
15 judgment on the pleadings.
16 I anticipate that this may not be the end, and the
17 Court issued this ruling on the basis of how I am
18 guessing that a higher court would interpret the
19 statutory language. That is the best that the Court
20 can do today.
21 I will sign an order if it is agreed to by the
22 parties as to form. The parties may agree as to the
23 form of the order or they may not. If they do not
24 agree, it can be set for a future hearing. As the
25 parties know well from the various hearings that you

1 sat through this morning, please do not sign an order
2 if you do not agree as to form.
3 (Proceedings were concluded.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Cheri L. Davidson, Official Court Reporter, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Carol Murphy on the 28th day of June, 2019 at Thurston County Superior Court, Olympia, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND THIS _____ day of _____, 2019.

_____
Official Court Reporter

BARNARD IGLITZIN & LAVITT

July 22, 2019 - 2:23 PM

Transmittal Information

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

The following documents have been uploaded:

- 527260_Other_20190722142255D2372311_4029.pdf
  This File Contains:
  Other - Statement of Additional Authority
  The Original File Name was 2019 07 22_Stmt of Add Auth with Excerpts.pdf

A copy of the uploaded files will be sent to:

- EStahlfeld@freedomfoundation.com
- JAbernathy@FreedomFoundation.com
- franco@workerlaw.com
- iglitzin@workerlaw.com
- jmatheson@freedomfoundation.com
- lawyer@stahlfeld.us
- robbins@workerlaw.com
- sphillips@freedomfoundation.com
- valenzuela@workerlaw.com
- woodward@workerlaw.com

Comments:

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Benjamin Daniel Berger - Email: berger@workerlaw.com (Alternate Email: owens@workerlaw.com)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190722142255D2372311

Filed
Washington State
Court of Appeals
Division Two

August 1, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Respondent, v. SEIU 775, a labor organization, Petitioner.	No. 52726-0-II ORDER DENYING MOTION TO MODIFY COMMISSIONER'S RULING

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

IT IS SO ORDERED.

Panel: Jj. Melnick, Glasgow, Cruser.

FOR THE COURT:

Melnick J.
Presiding Judge

☐ Expedite
☐ No hearing set
X Hearing is set
Date: September 6, 2019
Time: 9:00
Judge/Calendar: Hon. James Dixon – Civil Motion

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Plaintiff, v. SEIU 775, a labor organization; DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer, Defendants.	No. 18-2-00454-34 **PLAINTIFF'S MOTION TO LIFT STAY FOLLOWING DENIAL OF DISCRETIONARY REVIEW BY DIVISION II COURT OF APPEALS**

I. INTRODUCTION & STATEMENT OF FACTS.

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

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

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

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

3. The crux of the First Amended Complaint is that despite spending millions of dollars on political activity in 2016 as set forth above – including spending over half of its revenue on political contributions in June, 2016[1] – SEIU 775 has not registered as a political committee in Washington State and therefore has not reported millions of dollars of political activity that it should have disclosed.

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

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

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

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

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

the citizen complainant is precluded from acting while state officials consider whether or not to bring an FCPA enforcement action – and thereby endorsing the Foundation's interpretation of the relevant statutory language.

6. The Defendant sought to have the Court certify its denial of the motion for discretionary review by the Division II Court of Appeals, but this Court declined to certify the question, in an order dated December 7, 2018.

7. As such, the Union then filed a Notice of Discretionary Review on December 10, 2018, indicating that it was purporting to commence discretionary review in the Court of Appeals for the State of Washington, Division II.

8. After hearing argument from the parties, a Commissioner of the Division II Court of Appeals, Commissioner Aurora Bearse, denied discretionary review. The Commissioner's reasoning is set forth in the Ruling Denying Review, dated May 20, 2019, a true and correct copy of which is attached hereto as **Appendix 1**. In so doing, the Commissioner expressly found that the critical subsection (ii) "…is reasonably interpreted as a notice formality, which in conjunction with former RCW 42.17A.765(4)(a)(iii), reminds the prosecuting attorney and attorney general to act within 10 days after receiving the second notice to retain their right to sue." **App. 1**, at p. 5.

9. Nonetheless, on June 14, 2019, the Defendant filed a Motion to Stay all proceedings in this matter. The Motion to Stay did not request such relief until a date certain, instead effectively requesting a stay until the Motion to Modify was decided, and until appeals in two (2) *separate* matters, now pending in the Washington State Supreme Court, are concluded. *See* Defendant SEIU 775's Motion to Stay, at p. 1 ("Defendant … requests a stay of all trial court proceedings, pending [Plaintiff's] Petitions for Direct Review in the cases *Freedom Foundation v. Service Employees International Union Political Education and Action Fund*, No. 97111-1, and *Freedom Foundation*

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

v. Teamsters Local 117 Segregated Fund, et al., No. 97109-9, both filed on May 9, 2019, and pending SEIU 775's Motion to Modify the Order Denying Discretionary Review in the instant case, filed on June 3, 2019.").

10. Undeterred by Commissioner Bearse's ruling, the Union also redirected its request for discretionary review to the entire Division II Court of Appeals, by way of its Motion to Modify Commissioner's Ruling, which was submitted to the appellate court on June 23, 2019. The Motion to Modify raised no new arguments in favor of discretionary review, nor for why the Union's interpretation of the Statute in question was more persuasive than the Foundation's.

11. On June 28, 2019, the Court granted SEIU 775's Motion to Stay. In the course of doing so, the Court did not indicate that it required a disposition of the pending appeals in order to proceed, and made oral remarks indicating that either party could seek to have the stay lifted, upon a change in the relevant circumstances. At that time, Division II had not yet issued a ruling or otherwise passed upon the Motion to Modify Commissioner Bearse's ruling.

12. While the Court did not explicitly articulate its bases for granting the stay sought by SEIU 775, undersigned counsel believes that the Court did so primarily due to the pendency, at the time, of the Union' Motion to Modify the Commissioner's Ruling. Indeed, in the event that the Motion *had* been granted, the Division II Court of Appeals would have accepted discretionary review and taken jurisdiction of this matter.

13. Subsequently, however, the appellate court instead entered an Order Denying Motion to Modify Commissioner's Ruling, on August 1, 2019 (a true and correct copy of which is attached hereto as **Appendix 2**), thereby confirming that it will not be taking discretionary review of the Defendant's appeal, nor interfering with the due processing of the action by this Court.

14. Further, the Washington State Supreme Court has accepted direct review of the

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

consolidated appeals referenced in paragraph 9, *supra*, thereby expediting its ultimate review of the trial court rulings contrary to this Court's analysis.

II. EVIDENCE RELIED UPON.

The Plaintiff relies upon the Order Denying Motion to Modify Commissioner's Ruling, issued by the Court of Appeals of the State of Washington, Division II, on August 1, 2019 (**App. 2**), as well as the Ruling Denying Review, issued by Court Commissioner Aurora Bearse, on May 2, 2019 (**App. 1**).

III. QUESTION PRESENTED.

1. Should the Court now lift the stay entered on June 26, 2019, in light of the fact that the Court of Appeals has now determined not to take discretionary review of this matter, and has accepted direct review of contrary rulings by the trial courts in related matters?

IV. ARGUMENT.

A. The Primary Consideration in Support of a Stay No Longer Applies, But the Reasons for Expeditiously Processing This Matter Still Do.

At this time, the Washington Supreme Court has determined that the issues contained in the Foundation's pending appeals against Teamsters 117 and SEIU PEAF will be decided on direct review, in a consolidated appeal. *See* Orders, dated August 7, 2019, true and correct copies of which are attached hereto as **Appendix 3**. This strongly suggests that it is this Court's analysis that will ultimately carry the day on appeal, because the Supreme Court need not expedite review of the contrary rulings, if there is nothing amiss in those rulings below.

However, the contingency most directly relevant to the Union's Motion to Stay, *i.e.*, whether the appellate court will accept immediate review of this matter, has failed. *See* **App. 2**. The mere possibility that the Supreme Court will disagree with this Court's interpretation of the

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

FCPA is insufficient to justify a continuation of the stay until those matters are finally resolved.[3]

Such would be to the acute prejudice of the Plaintiff and its pending claims, because it is all too common that during the extended course of a lawsuit, not only (i) does the existing evidence become stale (as subject to faulty memories and perhaps no longer relevant), but also, (ii) it becomes significantly more difficult to obtain any additional evidence in the discovery that would subsequently follow the lifting of the stay. At that time (at some unknown point in the future), many of the current employees of SEIU 775 may no longer be in their positions or subject to the subpoena power of the Court, those documents currently retained by the Union may no longer be available, and the contemporary employees may no longer have relevant knowledge concerning the issues in this lawsuit.[4] At issue in this matter is not just money, but also the political activities engaged in by each employee with respect to the various committees operated by SEIU 775, and why a similar state political committee was not created for passage of Initiative 1501 – it can be anticipated that these activities will be difficult to remember years later. These evidentiary problems can be minimized, if the Court now permits the Foundation to vindicate its right of access to the courts (as contemplated by the statutory remedies of the FCPA) and to conduct discovery in

---

[3] The Supreme Court's Order of August 7 did not address whether the consolidated cases will be consolidated with another pending appeal that the Foundation has brought before the Washington Supreme Court on a petition for direct review; namely, *Freedom Foundation v. Jay Inslee, et al.*, Case No. 97394-6 (the "DSHS Matter"). Similar to the other pending Supreme Court appeals, the DSHS Matter is a citizen's action, which was dismissed upon the 10-day "statute of limitations" advanced by the Union. The Foundation has requested that this matter be consolidated with the others, but if it is not, then the processing of this matter would have to either: (i) await the resolution of the separate, additional DSHS Matter, as well, or (ii) proceed, and defeat the purpose of having waited for a ruling in the consolidated appeals, because it would be proceeding in the face of another pending appeal that could potentially be relevant to the Court's ruling.

[4] These possibilities are not merely abstract; indeed, SEIU 775 has already seen its President, David Rolf, recently complete his tenure, which is likely to precipitate greater changes in other personnel at the Union. Subsequent to his retirement and being dismissed as an individual Defendant in this matter, Mr. Rolf also relocated to Washington, D.C. The further passage of time before discovery is permitted will only render it more difficult to obtain his testimony on topics critically relevant to this matter, such as the extensive time that he spent on politics during his tenure as SEIU President. *See* First Amended Complaint, at ¶¶47-49 (alleging that Mr. Rolf spent 0% of his time on representational activities in 2014, and 40% of his time on politics that year, 62% of his time on "political activities and lobbying" in 2015, and 22% of his time on "political activities and lobbying" in the year 2016). The Court should not introduce greater prejudice to the Foundation's interests than has inevitably already resulted from the passage of time.

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

these proceedings, along with continuing to otherwise diligently prosecute the action. *See Doe v. Puget Sound Blood Center*, 117 Wn. 2d 772, 783, 819 P.2d 370 (1991) ("Thus, plaintiff's right of access to the courts and his concomitant right of discovery must be accorded a high priority in weighing the respective interests of the parties in litigation."); *see also Smith v. Smith*, 1 Wn. App. 2d 122, 134, 16 P.3d 45 (2017) ("First, delaying DVPO proceedings denies plaintiffs their right to meaningfully access the courts. By continuing a DVPO mater until the defendant's criminal case is resolved, the court prevents a plaintiff from timely receiving her statutory remedy under the DVPA.").

Similarly, it is the very considerations unique to FCPA claims that led the Legislature to enact a relatively short, 2-year statute of limitations for such claims – the nature of political campaigns renders the evidence relevant to such claims necessarily even more transient and fleeting than evidence in the normal litigation context, so much so that the Legislature felt that claims beyond two (2) years old were so difficult to litigate that they should be categorically barred instead. *See* Remarks of Rep. Sam Hunt, prime sponsor of HB 1832, before Senate Government Operations & Elections Committee (3/26/2007);[5] *see also* Rep. Hunt's remarks before House State Government & Tribal Affairs Committee (2/21/2007).[6]

---

[5] "In essence, it [HB 1832] shortens citizen complaint periods for complaints against campaigns for violations to two years. And, those of us who have been around campaigns know that after two years — if you have an issue campaign, if you have a losing campaign, even a winning campaign — the volunteer staff and folks 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 impact agencies like the Public Disclosure Commission, which has a five-year period; that would remain." Available at https://www.tvw.org/watch/?clientID=9375922947&eventID=2007031127&startStreamAt=1563&stopStreamAt=1630&autoStartStream=true (last visited June 18, 2019).

[6] "What we are trying to do is – we talked with Public Disclosure Commission on this and it appears that what we're trying to do is draft it to the wrong part of the RCW. We are not looking to interfere or to shorten the time that the PDC and – would have to address complaints and issues. We're more looking at the time for other complaints. And part of the problem is, with a two or four-year election cycle – once you get beyond that period it's hard to – especially if you're a losing campaign – to find your records, you know, who was your treasurer? Where is your treasurer? That sort of thing. Available at https://www.tvw.org/watch/?clientID=9375922947&eventID=2007031127&startStreamAt=1563&stopStreamAt=1630&autoStartStream=true (last visited June 18, 2019).

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

Indeed, delay itself, and of course the evidentiary prejudice resulting from the present stay of all proceedings (including discovery) in this timely-filed action, are more than sufficient grounds to end the hiatus to which it is presently subject. *See Avant Corp. v. Superior Court*, 79 Cal. App. 4th 876, 887 (2000) (*citing Clinton v. Jones*, 520 U.S. 681, 707-08 (1997) ("The complaint was filed within the statutory limitations period – albeit near the end of that period – and delaying trial would increase the danger of prejudice resulting from the loss of evidence, including the inability of witnesses to recall specific facts, or the possible death of a party.")); *see also Landis v. North American Co.*, 299 U.S. 248, 255 (1936). The Court should lift the stay not only to ensure that the Foundation's claims are not effectively drained of evidentiary support by the passage of time, but also in order to avoid having this matter sitting on its docket for an inordinate amount of time – notwithstanding the Supreme Court's having accepted review of the matters on appeal, its resolution will likely take over a year or more (totally setting aside contingencies relating to the DSHS Matter). *See Avant Corp.*, 79 Cal. App. at 888 ("Clearly, denial of the stay motion promotes the convenience of the court in the management of its cases.").

During that unknown period of time, the Foundation should not have to entirely stand down, and should be able to prosecute an action that is subject to no time-bar, according to the rulings of this Court and of Division II. At this time, the stay should be lifted, and this matter should proceed onward to a resolution.

B. Plaintiff Can Demonstrate No Prejudice in the Stay Being Lifted.

As the Foundation previously advised the Court in opposing a stay, the law is well-settled that such relief should be supported by some "hardship or inequity" in conducting civil proceedings. *See King v. Olympia Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d 45 (2000). While the Foundation recognizes that the Court nonetheless granted the stay sought by the Union, the

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

reasons for a stay have now dissipated, and there is still no basis for finding prejudice in the Defendant's having to defend. SEIU 775 can point to nothing more than the run-of-the-mill burdens incident to litigation, such as discovery, which is provided for by the Rules because it is required by the very nature of a dispute. There is nothing uniquely burdensome about this litigation; nor are there any unique circumstances for SEIU 775 to make out a case of hardship in support of extending the stay.

It is the Union itself that chose to spend millions of dollars directly on political activity, rather than establishing a political committee through which to disclose its contributions and expenditures. Discovery into these matters cannot be called a "hardship or inequity," however, because here it is nothing more than is called for by the broad, "totality of the circumstances" inquiry to determine whether an entity is a political committee. *See Evergreen Freedom Foundation v. Washington Education Association ("EFF")*, 111 Wn. App. 586, 599; 49 P.3d 894 (2002)). ("[These factors] are intended to reach all relevant evidence, but they are not exclusive. For example, by examining the totality of the circumstances, a fact finder may look at all of the organization's actions, including those in addition to its stated goals.") (emphasis added).

The only scenario in which discovery would prove unnecessary is if the appellate courts of this State ultimately agree with the Union's strained interpretation of the former provisions of the FCPA and require dismissal of this suit. *See id*. While that result is certainly *possible*, it is also increasingly unlikely (as the Commissioner and the Washington Supreme Court have already recognized), and the Division II Court of Appeals has determined that the "possible error" it is not likely enough to warrant interfering with the adjudication of this matter in this Court. It is indeed much more likely that none of the Court's labor will be wasted, and that the consolidated appeals will only vindicate its analysis.

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

C. The Public Interest Favors Lifting the Stay and Adjudicating This Matter.

Lastly, there is an acute prejudice to the public that would result from extending the delay in these proceedings and in a determination of whether SEIU 775 is a political committee subject to disclosures in this State. The FCPA clearly and forcefully expresses that it is in the public's interest to have timely disclosure of information concerning a political committee's activities. *See* RCW 42.17A.001 ("It is hereby declared by the sovereign people to be the public policy of the state of Washington: … [t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided."). The longer this matter takes to reach its eventual adjudication, however, the longer the public is deprived of critical information in making electoral decisions and otherwise exercising the prerogatives recognized by the FCPA. The Court should lift the stay that has been entered in this matter, in order to re-activate the processing of this matter toward its ultimate determination.

V. CONCLUSION.

In light of the fact that the primary consideration in support of the Court's previously granting a stay has now expired, the Plaintiff, FREEDOM FOUNDATION, respectfully requests that the Court lift the stay, entered in this matter on June 14, 2019, and continue with the lawful processing of this matter.

Dated this 27th day of August, 2019.

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

By: _____
Robert A. Bouvatte, Jr. WSBA #50220
P.O. Box 552, Olympia WA 98507
PH: 360.956.3482 | F: 360.352.1874
RBouvatte@freedomfoundation.com
Counsel for Freedom Foundation

DECLARATION OF SERVICE

I, Jennifer Matheson, hereby declare under penalty of perjury under the laws of the State of Washington that on August 27, 2019, I caused the foregoing Motion to Lift Stay to be filed with the clerk, and caused a true and correct copy of the same to be delivered via email per agreement to the following:

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

Attorneys for Defendants

Dated: August 27, 2019, at Olympia, Washington.

By: _____
Jennifer Matheson

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

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Respondent, v. SERVICE EMPLOYEES INTERNATIONAL UNION 775, a labor organization, Petitioner, DAVID ROLF, its President; and ADAM GLICKMAN, its Secretary-Treasurer, Defendants.	No. 52726-0-II RULING DENYING REVIEW

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

FACTS

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

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

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

ANALYSIS

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

> (1) The superior court has committed obvious error which would render further proceedings useless; [or]
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo of substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2)

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

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

RAP 2.3(b)(1)

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

> (4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.
>
> (a) This citizen action may be brought only if:
>
> (i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty five days after the notice;
>
> (ii) The person has thereafter further notified the attorney general and prosecuting attorney *that the person will commence a citizen's action within ten days upon their failure to do so;*
>
> (iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and
>
> (iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(Emphasis added.)

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

The superior court agreed with Freedom Foundation:

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

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

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

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

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

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

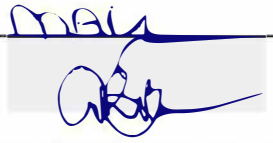
And even though subsection (4)(a)(ii) requires a complainant to inform the prosecuting attorney and attorney general that the citizen will file suit "within ten days," there is no requirement in this provision that the citizen actually bring the action within 10 days. The only time limitation is the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

CONCLUSION

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

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

DATED this 2nd day of May, 2019.



Aurora Bearse
Court Commissioner

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

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 2

Filed
Washington State
Court of Appeals
Division Two

August 1, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FREEDOM FOUNDATION, a Washington nonprofit organization, in the name of the State of Washington, Respondent, v. SEIU 775, a labor organization, Petitioner.	No. 52726-0-II ORDER DENYING MOTION TO MODIFY COMMISSIONER'S RULING

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

IT IS SO ORDERED.

Panel: Jj. Melnick, Glasgow, Cruser.

FOR THE COURT:

Melnick J.
Presiding Judge

FREEDOM FOUNDATION

V

SEIU 775 (PAC)

APPENDIX 3

FILED
SUPREME COURT
STATE OF WASHINGTON
8/7/2019
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION, Appellant/Cross-Respondent, v. TEAMSTERS LOCAL 117, et al., Respondents/Cross-Appellants.	)	No. 97109-9 **O R D E R** Thurston County Superior Court No. 17-2-06578-9

A Special Department of the Court, composed of Chief Justice Fairhurst and Justices Owens, Wiggins, González and Yu, considered at its August 6, 2019, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this Court will retain this case for hearing and decision. The Appellant/Cross-Respondent's motion to consolidate is granted. This case is consolidated with Supreme Court No. 97111-1 - *Freedom Foundation v. Service Employees International Union Political Education and Action Fund.* All further pleadings should be filed under Supreme Court No. 97109-9.

DATED at Olympia, Washington, this 7th day of August, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
8/7/2019
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION, Appellant/Cross-Respondent, v. SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION AND ACTION FUND, Respondent/Cross-Appellant.	)	No. 97111-1 **O R D E R** Thurston County Superior Court No. 18-2-01731-6

A Special Department of the Court, composed of Chief Justice Fairhurst and Justices Owens, Wiggins, González and Yu, considered at its August 6, 2019, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this Court will retain this case for hearing and decision. The Respondent/Cross-Appellants' motion to consolidate is granted. This case is consolidated under Supreme Court No. 97109-9 - *Freedom Foundation v. Teamsters Local 117, et al.* All further pleadings should be filed under Supreme Court No. 97109-9.

DATED at Olympia, Washington, this 7th day of August, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

BARNARD IGLITZIN & LAVITT

August 30, 2019 - 1:32 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Freedom Foundation, Respondent v. SEIU 775, Petitioner (527260)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20190830132623SC068238_8164.pdf
  This File Contains:
  Motion for Discretionary Review of Court of Appeals
  The Original File Name was 2019 08 30 MOT for Discretionary Review Final.pdf
- DCA_Other_20190830132623SC068238_0089.pdf
  This File Contains:
  Other - Appendix of Documents: 001-305
  The Original File Name was 2019 08 30 APP iso Mot Disc Review with App.pdf

A copy of the uploaded files will be sent to:

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

Comments:

Sender Name: Jennifer Woodward - Email: woodward@workerlaw.com
Filing on Behalf of: Darin M Dalmat - Email: dalmat@workerlaw.com (Alternate Email: woodward@workerlaw.com)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6016

Note: The Filing Id is 20190830132623SC068238