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SUPREME COURT  
STATE OF WASHINGTON  
11/4/2020 2:55 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 98989-3  
Court of Appeals No. 53415-1-II

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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FREEDOM FOUNDATION,

Petitioner,

v.

BETHEL SCHOOL DISTRICT, and the WASHINGTON STATE  
PUBLIC DISCLOSURE COMMISSION,

Respondents.

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**ANSWER OF RESPONDENT BETHEL SCHOOL DISTRICT  
TO PETITION FOR DISCRETIONARY REVIEW**

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## I. INTRODUCTION

The petition for discretionary review brought by the Freedom Foundation (“Foundation”) should be dismissed because the Court of Appeals correctly held that the Foundation lacked standing in both superior court actions. The Court of Appeals held that the Foundation lacked standing to bring a citizen’s suit alleging a violation of the Fair Campaign Practices Act (FCPA), chapter 42.17A RCW, and that it also lacked standing to pursue judicial review of the dismissal of its complaint by the Public Disclosure Commission (“PDC”).

The Foundation lacked standing to bring a citizen’s suit because the PDC dismissed the Foundation’s complaint within 90 days after receiving the complaint. Under the revised FCPA, such action by the PDC deprives the Foundation of standing to bring a citizen’s action. The Foundation also lacked standing to appeal the PDC’s dismissal of the Foundation’s complaint because the Foundation cannot satisfy the requirements challenging the PDC’s dismissal.

In addition, the Foundation has challenged acts of the Bethel School District (“District”) that are authorized by Washington law. Specifically, Washington law requires school districts to process payroll deductions when at least ten percent of its employees specify the same payee. Because more than ten percent of the District’s employees designated the

Washington Education Association's Political Action Committee (WEA-PAC) and the National Education Association Fund for Children and Public Education (NEA-FCPE) as payees, the processing of these deductions is required by state law.

Furthermore, activities which are part of the normal and regular conduct of an agency are excluded from the FCPA's prohibition against using public facilities in political campaigns. Because the processing of payroll deductions for hundreds of employees on a monthly basis is part of the District's normal and regular conduct, the District did not violate the FCPA. Finally, the FCPA allows employers to process payroll deductions to political committees when authorized in writing by employees. Because the payroll deductions to WEA-PAC and NEA-FCPE were authorized in writing, there has been no violation of the FCPA.

For these reasons, and because the Foundation has not satisfied the requirements for discretionary review, the District requests that the Court deny the Foundation's petition for discretionary review.

## **II. IDENTITY OF RESPONDENT**

The Respondent Bethel School District, a defendant in the Superior Court cases, requests that the Court deny the petition for discretionary review of the Court of Appeals decision in *Freedom Foundation v. Bethel School District, et al.*, Nos. 53415-1-II, 53430-4-II, 2020 Wash. App.

LEXIS 2205 (Ct. App. Aug. 4, 2020) (“Opinion” or “Op.”), attached as Appendix A to the petition for discretionary review.

### **III. ISSUES PRESENTED FOR REVIEW**

1. Under the amended FCPA, did the Court of Appeals correctly hold that the Foundation lacked standing to bring a citizen’s action after the PDC dismissed the Foundation’s complaint within 90 days after receiving the complaint?

2. Did the Court of Appeals correctly hold that the Foundation lacked standing to pursue judicial review of the PDC’s dismissal of its complaint because the Foundation was not a party to the PDC complaint and because it did not suffer specific and perceptible harm from the PDC’s dismissal?

3. Should the petition for review be denied because the District complied with RCW 28A.405.400, which requires school districts to process payroll deductions when at least ten percent of employees specify the same payee, and where the District processed deductions for WEA-PAC and NEA-FCPE after 24 percent of the District’s employees specified WEA-PAC as a payee and 17 percent specified NEA-FCPE as a payee?

4. Should the petition for review be denied because the District processed payroll deductions for the benefit of WEA-PAC and NEA-FCPE

when the deductions were authorized in writing by the employee and when such deductions are part of the normal and regular conduct of the agency?

#### **IV. STATEMENT OF THE CASE**

##### **A. The District's Process for Handling Employee-Authorized Payroll Deductions**

As required by RCW 28A.405.400,<sup>1</sup> the District allows employees to make payroll deductions to specific payees. Clerk's Papers (CP) at 16 (Decl. of Todd Mitchell<sup>2</sup> at ¶4). Under the law, such deductions are mandatory if at least ten percent of the employees specify the same payee. RCW 28A.405.400. Of the District's 2800 employees, approximately 24 percent (680 employees) have specified the WEA-PAC as a payee, while approximately 17 percent (475 employees) have specified the NEA-FCPE as a payee. CP 16. Because more than ten percent of employees have specified the WEA PAC or the NEA-FCPE, these deductions are mandatory under RCW 28A.405.400.

In addition, the District allows employees to make written requests for payroll deductions to political committees in accordance with RCW 42.17A.495(3).<sup>3</sup> CP 16. The District has processed these deductions

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<sup>1</sup> RCW 28A.405.400 is attached as Appendix A.

<sup>2</sup> The Declaration of Todd Mitchell (CP 15-18) is attached as Appendix B.

<sup>3</sup> RCW 42.17A.495 is attached as Appendix C.



for several years. CP 16. These payroll deductions are processed monthly and are part of the District's normal and regular conduct. CP 16.

**B. The Lawsuits Filed by the Foundation**

On June 20, 2018, the Foundation filed a complaint with the PDC. CP 23. The complaint alleged a violation of RCW 42.17A.555<sup>4</sup> based upon the use of District facilities to process employee contributions to WEA-PAC and NEA-FCPE. CP 23. On August 30, 2018, the District responded to the complaint. *Id.* The PDC reviewed the complaint, the documents filed by the Foundation, and the response of the District. After conducting this review and assessing factual and legal arguments governing the complaint, the PDC determined that the complaint was without merit and dismissed it on September 10, 2018. CP 23-24.

Following the PDC's dismissal, the Foundation filed two actions in Thurston County Superior Court: a citizen's action suit against the District and a petition to review the PDC dismissal.

**1. The citizen's action suit against the District.**

On October 10, 2018, the Foundation filed a lawsuit against the District in Thurston County Superior Court Cause No. 18-2-05084-34, alleging the same violation of RCW 42.17A.555 that was alleged in the

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<sup>4</sup> RCW 42.17A.555 is attached as Appendix D.

Foundation's complaint to the PDC. CP 1-2. In its Answer, the District asserted affirmative defenses, including lack of standing and a failure to state a claim upon which relief can be granted. CP 12.

The District moved for summary judgment, contending that: (1) the Foundation lacked standing to file a citizen's suit under RCW 42.17A.775,<sup>5</sup> and (2) the payroll deductions challenged by the Foundation are authorized by Washington law. CP 36-37. On April 19, 2019, the Honorable Carol Murphy granted the District's motion and dismissed the Foundation's claims with prejudice. CP 200-202. The Foundation timely appealed the court's order. CP 204-11.

**2. The petition to review the PDC's dismissal.**

Concurrently with the citizen's action suit, the Foundation filed a petition to review the PDC's decision in Thurston County Superior Court Cause No. 18-2-05092-34. CP 216-29. In its Answer to the petition, the District asserted affirmative defenses, which included lack of standing and a failure to state a claim upon which relief can be granted. CP 233.

The PDC moved to dismiss the petition. CP 236-47. The PDC contended that the Foundation lacked standing and that the Administrative Procedures Act provided no basis for judicial review of the dismissal of the

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<sup>5</sup> RCW 42.17A.775 is attached as Appendix E.

complaint by the PDC. On March 1, 2019, the Honorable Erik Price granted the PDC's motion. CP 412-13.

The District also moved for summary judgment, joining in the arguments raised by the PDC. CP 248-58. The District also argued that the Foundation lacked standing to bring a citizen's suit and that Washington law authorized the District's actions. CP 249. On March 29, 2019, Judge Price granted the District's motion and dismissed the Foundation's claims against the District. CP 432-34. On April 1, 2019, the Foundation appealed the order granting the District's motion and the order granting the PDC's motion. CP 435-44.<sup>6</sup>

On August 4, 2020, the Court of Appeals affirmed the superior courts' dismissals in both cases, holding that the Foundation "does not have authority to bring a citizen's action and that it lacked standing to seek judicial review of the PDC's dismissal." Op. at 2. The Foundation seeks discretionary review of that decision.

## **V. ARGUMENT FOR DENYING REVIEW**

### **A. Review should not be granted because the Court of Appeals correctly affirmed the superior court dismissals**

The Foundation's petition seeks discretionary review under RAP 13.4(b)(1), (b)(2) and (b)(4). Pet. at 7. Because the opinion of the

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<sup>6</sup> The Foundation moved to consolidate the appeals filed in Cause Nos. 18-2-05084-34 and 18-2-05092-34, and the Court of Appeals consolidated them under Cause No. 53415-1-II.

Court of Appeals is not in conflict with decisions of this Court or the Court of Appeals, and because it does not concern an issue of substantial public interest that should be determined by this Court, review should be denied.

**B. The Standard for Review Is De Novo.**

An appellate court reviews a summary judgment order de novo and engages in the same inquiry as the trial court. *Allstate Ins. Co. v. Raynor*, 143 Wn.2d 469, 475, 21 P.3d 707 (2001). Issues of statutory interpretation are also reviewed de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013). Statutory interpretation aims to “to determine and give effect to the intent of the legislature.” *Id.* at 192 (citation omitted). If possible, a court derives “legislative intent solely from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.” *Id.*

**C. The Court of Appeals Correctly Held that the Foundation Lacked Standing in Both Actions.**

**1. The Foundation lacked standing to file a citizen’s suit.**

Prior to 2018, the “citizen suit provision of the FCPA” permitted “citizens to file a ‘citizen action’ alleging violations of the act if they give notice of a violation in writing to the [Attorney General] and the AG ‘fail[s] to commence an action hereunder.’” *Utter ex rel. State v. Bldg. Indus. Ass’n of Wash.*, 182 Wn.2d 398, 405, 341 P.3d 953 (2015) (citing RCW

42.17A.765(4)(a)(i)). Under the FCPA in effect at that time, a citizen could file suit in superior court alleging a violation of the FCPA if the Attorney General failed to file a lawsuit within 45 days of receiving notice of an alleged violation of the FCPA. *Utter*, 188 Wn.2d at 412.

In 2018, however, the legislature passed Engrossed Substitute House Bill 2938,<sup>7</sup> which amended the FCPA. CP 20, 25-29. ESHB 2938 deleted RCW 42.17A.765(4)(a)(i) and inserted a new section, RCW 42.17A.775, that now governs citizen suits. CP 20, 26-29. The amendments to the FCPA became effective on June 7, 2018, which is 13 days before the Foundation filed its complaint with the PDC. CP 23.

Under the revised FCPA, citizens may sue only if the PDC “has not taken action” within 90 days of receiving a complaint. RCW 42.17A.775(2). The “action” taken by the PDC includes dismissing the complaint after a preliminary review. RCW 42.17A.755(1)(a); Op. at 7.

Here, the Court of Appeals correctly held that the plain language of RCW 42.17A.755 and RCW 42.17A.775 prohibits the Foundation from bringing “a citizen’s action following the PDC’s timely dismissal of its complaint.” Op. at 7. Because the PDC acted timely upon the Foundation’s

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<sup>7</sup> The full text of Engrossed Substitute House Bill 2938 may be found at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2938-S.SL.pdf>

complaint, the Foundation “does not meet the prerequisites for filing a citizen’s action.” Op. at 8.

Faced with the Court of Appeals’ straightforward interpretation of the plain language of the revised FCPA, the Foundation offers a convoluted version of the amended FCPA. Pet. at 7-13. In the process, the Foundation continues to rely on *Utter*. Pet. at 7-9. As the Court of Appeals notes, however, *Utter* was decided before the FCPA was amended and, as a result, it “is not helpful in construing” the amended FCPA. Op. at 9. Like the Court of Appeals, this Court should reject the Foundation’s strained interpretation of the FCPA and its misplaced reliance on *Utter*.

Here, the PDC dismissed the Foundation’s complaint on September 10, 2018. CP 23-24. That date was 82 days after the PDC received the complaint.

Because the PDC dismissed the Foundation’s complaint within 90 days, the Foundation lacked standing to bring a citizen’s action. *See* RCW 42.17A.775(1). Because the Foundation lacked standing, the appellate court correctly affirmed the dismissal of the citizen’s action.

**2. The Foundation lacked standing to challenge the PDC’s decision.**

In affirming the trial court’s decision, the Court of Appeals held that the Foundation lacked standing to pursue judicial review under the

Administrative Procedures Act. Op. at 9. The Court of Appeals held that the Foundation lacked standing because it was not a party to the PDC complaint and because it did not suffer specific and perceptible harm. *Id.* Because the Court of Appeals correctly held that the Foundation to challenge the PDC's decision, the petition for review should be denied.

While the Court of Appeals' affirmance of the trial courts decisions was based solely on standing grounds, summary judgment may be affirmed on any grounds supported by the record. *See Graff v. Allstate Ins. Co.*, 113 Wn. App. 799, 802, 54 P.3d 1266 (2002). Here, there are additional grounds warranting the summary judgment dismissals of the Foundation's suits.

**D. The Petition Should Be Denied Because No Reasonable Trier of Fact Would Conclude that the District Violated the FCPA.**

**1. Washington law requires a school district to make payroll deductions to a payee when authorized by at least ten percent of the district's employees.**

Washington law requires school districts to make payroll deductions when these deductions are authorized by at least ten percent of its employees:

In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages to employees of school districts, **upon written request of at least ten percent of the employees, shall make deductions as they authorize**, subject to the limitations of district equipment or personnel. Any person authorized to disburse funds shall not be required to make other deductions for employees if fewer than ten percent of the employees make the request for the same payee. **Moneys**

**so deducted shall be paid or applied monthly by the school district for the purposes specified by the employee.** The employer may not derive any financial benefit from such deductions. ...

RCW 28A.405.400 (emphasis added). The statute is mandatory and does not give the District discretion unless less than ten percent of employees request the deduction, subject to any limitations in district equipment or personnel.

Of the District's 2800 employees, approximately 24 percent (680 employees) have requested payroll deductions be sent to the WEA-PAC as a payee, while approximately 17 percent (475 employees) have specified NEA-FCPE as payee. CP 16. Because more than ten percent of employees have specified the WEA PAC or the NEA-FCPE as payees, these deductions are mandatory under RCW 28A.405.400. These payroll deductions are processed monthly and are part of the normal and regular conduct of the District. CP 16 (¶ 3).

**2. Activities which are part of the normal and regular conduct of the District are excluded from the FCPA's prohibition against using public facilities in campaigns.**

The Foundation alleges that the District violated RCW 42.17A.555. This statute prohibits the use of any facilities of a public agency in campaigns, but it does not apply to activities which are part of the normal and regular conduct of the agency:



No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. **However, this does not apply to the following activities:**

...

(3) Activities which are part of the normal and regular conduct of the office or agency.

RCW 42.17A.555 (emphasis added). Because “‘normal’ and ‘regular’ are not statutorily defined, they should be given their ordinary meaning.” *King Cty. Council v. Pub. Disclosure Com*, 93 Wn.2d 559, 561, 611 P.2d 1227 (1980).

In *King County Council*, the Washington Supreme Court held that the Council’s endorsement of a ballot proposition did not violate the FCPA because the endorsement was part of the Council’s normal and regular conduct. *King Cty Council*, 93 Wn.2d at 561-63. The conduct was “normal” because the Council had passed similar endorsements 13 times in the previous five years. *Id.* at 562. The endorsement was “regular” because it was lawful. *Id.* at 563 (“[W]e conclude the action of the council was lawful and therefore ‘regular.’”).

Consistent with *King County Council*, state regulations define “normal and regular conduct” to include conduct that is authorized by state law:

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) **lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment**, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or *statutory provision separately authorizing such use*.

WAC 390-05-273 (emphasis added).

With hundreds of employees requesting monthly deductions to WEA-PAC and NEA-FCPE, a reasonable trier of fact would conclude that the processing of these deductions are part of the normal and regular conduct of the District. Because the processing of the deductions is part of the normal and regular conduct of the District, the District’s actions do not violate RCW 42.17A.555.

**3. The FCPA allows employers to process payroll deductions to political committees when authorized in writing by employees.**

Washington law authorizes employers to withhold or divert a portion of an employee’s wages for contributions to political committees upon the written authorization of the employee:

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions **except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization** discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.

RCW 42.17A.495(emphasis added). To implement this statute, the PDC has issued a regulation, WAC 390-17-100, which contains the information that must appear on the form used for the withholding of wages for political contributions. The form used by the District complies with this regulation. CP 16, 18.

In a case involving several school districts, this Court upheld payroll deductions for the WEA, upon written authorization of school district employees, under the statute that is now codified as RCW 42.17A.495(3). *State ex rel. Evergreen v. WEA*, 140 Wn.2d 615, 618-19, 999 P.2d 602 (2000) (“[The Superior] court concluded that Respondent School Districts did not violate section 680(3) because WAC 390-17-100, the rule promulgated by the Public Disclosure Commission to implement the statute, is entitled to great weight and the School Districts have complied with it. We affirm.”) In affirming the school districts’ actions, the Supreme Court

accepted the school districts' status as an employer under the statute that is currently codified as RCW 42.17A.495(3). *See Evergreen*, 140 Wn.2d at 623. The *Evergreen* decision stands for the proposition that school districts may divert part of an employee's wages to a political committee, if it is done properly and in accordance with RCW 42.17A.495(3).

Here, the District, in its processing of payroll deductions, has acted in accordance with RCW 28A.405.400, RCW 42.17A.555, and RCW 42.17A.495.

As required by RCW 28A.405.400, the District allows employees to make payroll deductions to specific payees. CP 16 (§ 4). Under this statute, such deductions are mandatory when at least ten percent of the employees specify the same payee. Because more than ten percent of employees have specified the WEA PAC or the NEA-FCPE, these deductions are mandatory under RCW 28A.405.400. The District's compliance with the statute provides proof that the processing of the deductions is part of the normal and regular conduct of the District.

Activities that are part of the normal and regular conduct of the District are excluded from the FCPA's prohibition against using public facilities in political campaigns. A reasonable trier of fact would find that the District's processing of hundreds of payroll deductions on monthly basis is part of the District's normal and regular conduct.

As authorized by RCW 42.17A.495, the District allows employees to make written requests for payroll deductions to political committees. CP 16 (§ 2). The District's compliance with RCW 42.17A.495 provides further proof that the processing of the deductions is part of the normal and regular conduct of the District.

When the District processes employee deductions, it does so on a neutral basis, irrespective of the political or religious viewpoints of the employee or the employee's designee. Indeed, the District would be required by RCW 28A.405.400 to make payroll deductions for the benefit of the Foundation itself, should at least ten percent of its employees designate the Freedom Foundation as the payee.

Because these payroll deductions are authorized by state law, they are lawful and thus constitute regular conduct by the District. *See King Cty Council, supra*. Because these deductions are processed for hundreds of employees on a monthly basis, year after year, they constitute normal conduct by the District. Because the processing of payroll deductions constitutes normal and regular conduct, the District's actions do not violate the FCPA. Because no reasonable trier of fact would conclude that the District's processing of employee payroll deductions violates the FCPA, the

trial courts did not err in dismissing the Foundation's complaints.<sup>8</sup> Thus, the Foundation's petition for review should be denied.

## VI. CONCLUSION

Because the Foundation lacks standing and because no reasonable trier of fact would find that the District violated the FCPA, the District requests that this Court deny the petition for review.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2020.

VANDEBERG JOHNSON &  
GANDARA, LLP

By /s/William A. Coats  
William A. Coats, WSBA #4608  
Daniel C. Montopoli, WSBA #26217  
Attorneys for Respondent  
Bethel School District

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<sup>8</sup> The Foundation may argue that the summary judgment motions should not be granted because discovery was incomplete. As the Court of Appeals pointed out, however, the Foundation "failed to move for a continuance to conduct further discovery and as a result, is precluded from raising the issue on appeal." Op. at 14 n.8.

## **APPENDICES**

APPENDIX A: RCW 28A.405.400

APPENDIX B: Declaration of Todd Mitchell (CP 15-18)

APPENDIX C: RCW 42.17A.495

APPENDIX D: RCW 42.17A.555

APPENDIX E: RCW 42.17A.775

**CERTIFICATE OF SERVICE**

The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandenberg Johnson & Gandara. On the 4<sup>th</sup> day of November, 2020, I caused to be served via email and first class mail a copy of the foregoing document to:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 4<sup>th</sup> day of November, 2020, at Tacoma, Washington.

*/s/ Kim Somerville*  
Kim Somerville, Legal Assistant



## Rev. Code Wash. (ARCW) § 28A.405.400

Statutes current with legislation from the 2020 Regular Session

*Annotated Revised Code of Washington > Title 28A Common School Provisions (Chs. 28A.04 — 28A.900) > Chapter 28A.405 Certificated Employees (§§ 28A.405.005 — 28A.405.900) > Salary and Compensation (§§ 28A.405.400 — 28A.405.415)*

### **28A.405.400. Payroll deductions authorized for employees.**

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In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages to employees of school districts, upon written request of at least ten percent of the employees, shall make deductions as they authorize, subject to the limitations of district equipment or personnel. Any person authorized to disburse funds shall not be required to make other deductions for employees if fewer than ten percent of the employees make the request for the same payee. Moneys so deducted shall be paid or applied monthly by the school district for the purposes specified by the employee. The employer may not derive any financial benefit from such deductions. A deduction authorized before July 28, 1991, shall be subject to the law in effect at the time the deduction was authorized.

### **History**

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1991 c 116 § 18; 1972 ex.s. c 39 § 1. Formerly RCW 28A.67.095.

Annotated Revised Code of Washington  
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**EXPEDITE**  
 Hearing is set:  
Date: March 1, 2019  
Time: 9:00 a.m.  
Judge/Calendar: Hon. Carol Murphy

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

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

Plaintiff,

v.

BETHEL SCHOOL DISTRICT,

Defendant.

WASHINGTON EDUCATION  
ASSOCIATION, a Washington nonprofit  
corporation; and the WASHINGTON STATE  
PUBLIC DISCLOSURE COMMISSION,

Possibly interested parties.

No. 18-2-05084-34

**DECLARATION OF  
TODD MITCHELL IN SUPPORT OF  
THE BETHEL SCHOOL DISTRICT'S  
MOTION FOR SUMMARY  
JUDGMENT**

I, Todd Mitchell, under penalty of perjury under the laws of the State of Washington,  
solemnly declare the following, based on my own personal information and belief:

1. I am the Executive Director for Human Resources in the Bethel School District. In  
this capacity, I am familiar with the District's procedures for processing employee-authorized  
payroll deductions.

DECLARATION OF TODD MITCHELL IN SUPPORT  
OF THE BETHEL SCHOOL DISTRICT'S MOTION FOR  
SUMMARY JUDGMENT - 1

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1           2.     Under RCW 42.17A.495, the District allows employees to make written  
2 authorizations for payroll deductions to political committees or for use as political contributions.  
3 A copy of the form used for these deductions is attached as **Exhibit A**.

4           3.     Within the past year, approximately 680 employees have authorized payroll  
5 deductions for political purposes to the Washington Education Association's Political Action  
6 Committee (WEA-PAC) and approximately 475 employees have authorized payroll deductions  
7 for political purposes to the National Education Association Fund for Children and Public  
8 Education (NEA-FCPE). These deductions are processed monthly and are part of the normal and  
9 regular conduct of the District.

10          4.     The District also allows an employee to authorize payroll deductions upon the  
11 written request of the employee. Under RCW 28A.405.400, such deductions are mandatory if more  
12 than ten percent of the employees specify the same payee, subject to the limitations of district  
13 equipment or personnel. Of the District's 2800 employees, approximately 24% (680 employees)  
14 have specified the WEA-PAC as a payee, while approximately 17% (475 employees) have  
15 specified the NEA-FCPE as payee. The District has processed these deductions for several years  
16 and will continue to do so in 2019.

17                   DATED this 29 day of January, 2019, in Spanaway, Pierce County, Washington.

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Todd Mitchell

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DECLARATION OF TODD MITCHELL IN SUPPORT  
OF THE BETHEL SCHOOL DISTRICT'S MOTION FOR  
SUMMARY JUDGMENT - 2

VANDEBERG JOHNSON & GANDARA, LLP  
ATTORNEYS AT LAW  
1201 PACIFIC AVENUE, SUITE 1900  
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**DECLARATION OF SERVICE**

I, Kim Redford, hereby declare under penalty of perjury under the laws of the State of Washington that on ~~10/21~~ 10/26, 2019, I caused the foregoing document to be filed with the court and caused a true and correct copy of the same to be delivered via email to:

Sidney Phillips  
[SPhillips@freedomfoundation.com](mailto:SPhillips@freedomfoundation.com)

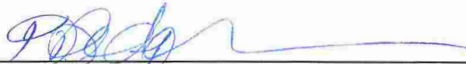
Eric R. Stahlfeld  
[estahlfeld@freedomfoundation.com](mailto:estahlfeld@freedomfoundation.com)

Michael J. Gawley  
Attorney for Washington Education Association  
[mgawley@washingtonea.org](mailto:mgawley@washingtonea.org)

and via USPS to:

Peter Lavalle, Executive Director  
Washington State Public Disclosure Commission  
711 Capitol Way, Room 206  
Olympia, WA 98501

Office of Attorney General  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504

  
\_\_\_\_\_  
Kim Redford, Legal Assistant



**AUTHORIZATION FOR POLITICAL CONTRIBUTIONS**

Name (First, MI, Last) \_\_\_\_\_ Home email \_\_\_\_\_

Home Address (Street, Route or Box) \_\_\_\_\_ Apt. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Social Security Number:     Local Association/Employer Bethel SD

(Enter last four digits)

**WASHINGTON EDUCATION ASSOCIATION POLITICAL ACTION COMMITTEE (WEA-PAC)  
NATIONAL EDUCATION ASSOCIATION FUND FOR CHILDREN & PUBLIC EDUCATION (NEA-FCPE)**

The Washington Education Association Political Action Committee (WEA-PAC) and the National Education Association Fund for Children and Public Education (NEA-FCPE) collect voluntary contributions from Association members and use those contributions for political purposes including, but not limited to, making contributions to and expenditures on behalf of friends of public education who are candidates for state and local office, and in the case of the NEA-FCPE, for federal office. Contributions to the NEA-FCPE and WEA-PAC are voluntary; making a contribution is neither a condition of employment, nor membership in the Association, and members have the right to refuse to contribute without suffering any reprisal. No employer or labor organization may discriminate against an officer or employee in the terms and conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party or political committee.

A member may give more or less than the suggested amount of \$12 per year to the NEA-FCPE, or may contribute nothing at all, without it affecting his or her membership status, rights, or benefits in the NEA or WEA. Only U.S. citizens or lawful permanent residents may contribute to the NEA-FCPE or WEA-PAC. Federal law prohibits the NEA-FCPE from receiving donations from persons other than members of the NEA and its affiliates and their immediate families. All donations from persons other than members of NEA and its affiliates and their immediate families will be returned forthwith. Federal law also requires us to use our best efforts to collect the name, mailing address, occupation, and the name of employer of individuals whose contributions to the NEA-FCPE aggregate in excess of \$200 in a calendar year. Contributions to WEA-PAC and/or the NEA-FCPE are not deductible as charitable contributions for income tax purposes.

No employer or other person may withhold a portion of a Washington state resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written permission from that individual. Completion of this form entitles the entity specified to make such a withholding. This authorization for withholdings and contributions remains in effect until revoked in writing by the employee and received by WEA-PAC at P.O. Box 9100, Federal Way, WA 98063-9100.

Please discontinue any/all Electronic Funds Transfer (EFT) authorizations on file from my credit card and/or bank account.

**AUTHORIZATION FOR PAYROLL DEDUCTION**

In order to contribute to WEA-PAC and NEA-FCPE please check the appropriate boxes below:

- WEA-PAC: I, the undersigned, acknowledge that I am a member of the above-named education association (where the entity representing my bargaining unit is a WEA/NEA affiliate), the Washington Education Association and the National Education Association. With full knowledge of the information above, I hereby authorize my employer to deduct \$2.25 per month from my salary in order to make contributions to WEA-PAC. Multiple authorizations will result in only ONE deduction of \$2.25. I agree that this authorization shall be automatically renewed each year thereafter unless written notice of revocation is given by me to WEA. Only certificated or classified personnel employed by Washington School Districts may elect to make contributions by payroll deduction.
- NEA-FCPE: With full knowledge of the information above, I authorize you as my employer to deduct from my salary, in accordance with agreed-upon payroll procedure, the suggested NEA-FCPE contribution of \$12 (\$1 per month) for the current NEA membership year and each membership year thereafter. I understand that I am free to contribute more or less than this suggested amount (or nothing at all), but can only do so via a method other than payroll deduction. I agree that this authorization shall be automatically renewed each year thereafter unless written notice of revocation is given by me to WEA. Only certificated or classified personnel employed by Washington School Districts may elect to make contributions by payroll deduction.

Member's Signature \_\_\_\_\_ Date 12/12/18 Building Representative (optional) Cain

White - Unions/NEA Yellow - Payroll Pink - WEA-PAC Gold - Member/Other PAC Payroll Authorization (NEA)

received 11/12/18 *[Signature]*

EXHIBIT A

## Rev. Code Wash. (ARCW) § 42.17A.495

Statutes current with legislation from the 2020 Regular Session

*Annotated Revised Code of Washington > Title 42 Public Officers and Agencies (Chs. 42.04 — 42.60) > Chapter 42.17A Campaign Disclosure and Contribution (§§ 42.17A.001 — 42.17A.920) > Campaign Contribution Limits and Other Restrictions (§§ 42.17A.400 — 42.17A.550)*

### **42.17A.495. Limitations on employers or labor organizations.**

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(1) No employer or labor organization may increase the salary of an officer or employee, or compensate an officer, employee, or other person or entity, with the intention that the increase in salary, or the compensation, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions of this subsection.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request.

### **History**

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2010 c 204 § 613; 2002 c 156 § 1; 1993 c 2 § 8 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.680.

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## Rev. Code Wash. (ARCW) § 42.17A.555

Statutes current with legislation from the 2020 Regular Session

*Annotated Revised Code of Washington > Title 42 Public Officers and Agencies (Chs. 42.04 — 42.60) > Chapter 42.17A Campaign Disclosure and Contribution (§§ 42.17A.001 — 42.17A.920) > Public Officials', Employees', and Agencies' Campaign Restrictions and Prohibitions — Reporting (§§ 42.17A.555 — 42.17A.575)*

### **42.17A.555. Use of public office or agency facilities in campaigns — Prohibition — Exceptions.**

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No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
- (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (3) Activities which are part of the normal and regular conduct of the office or agency.
- (4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

### **History**

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2010 c 204 § 701; 2006 c 215 § 2; 1979 ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.130.

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## Rev. Code Wash. (ARCW) § 42.17A.775

Statutes current with legislation from the 2020 Regular Session

*Annotated Revised Code of Washington > Title 42 Public Officers and Agencies (Chs. 42.04 — 42.60) > Chapter 42.17A Campaign Disclosure and Contribution (§§ 42.17A.001 — 42.17A.920) > Enforcement (§§ 42.17A.750 — 42.17A.785)*

### **42.17A.775. Citizen's action.**

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

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

(a) The commission has not taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission, and the person who initially filed the complaint with the commission provided written notice to the attorney general in accordance with RCW 42.17A.755(5) and the attorney general has not commenced an action, or published a decision whether to commence action pursuant to RCW 42.17A.765(1)(b), within forty-five days of receiving the notice;

(b) For matters referred to the attorney general within ninety days of the commission receiving the complaint, the attorney general has not commenced an action, or published a decision whether to commence an action pursuant to RCW 42.17A.765(1)(b), within forty-five days of receiving referral from the commission; and

(c) The person who initially filed the complaint with the commission has provided notice of a citizen's action in accordance with subsection (3) of this section and the commission or the attorney general has not commenced action within the ten days provided under subsection (3) of this section.

(3) To initiate the citizen's action, after meeting the requirements under subsection (2) (a) and (b) of this section, a person must notify the attorney general and the commission that the person will commence a citizen's action within ten days if the commission does not take action authorized under RCW 42.17A.755(1), or the attorney general does not commence an action or publish a decision whether to commence an action pursuant to RCW 42.17A.765(1)(b). The attorney general and the commission must notify the other of its decision whether to commence an action.

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

(5) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state for reasonable costs and reasonable attorneys' fees the person incurred. In the case of a citizen's action that is dismissed and that the court

also finds was brought without reasonable cause, the court may order the person commencing the action to pay all trial costs and reasonable attorneys' fees incurred by the defendant.

## **History**

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2019 c 428, § 40, effective May 21, 2019; 2018 c 304, § 16, effective June 7, 2018.

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**VANDEBERG JOHNSON & GANDARA**

**November 04, 2020 - 2:55 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98989-3  
**Appellate Court Case Title:** Freedom Foundation v. Bethel School District, at al.  
**Superior Court Case Number:** 18-2-05092-5

**The following documents have been uploaded:**

- 989893\_Answer\_Reply\_20201104145212SC012813\_1029.pdf  
This File Contains:  
Answer/Reply - Answer to Motion for Discretionary Review  
*The Original File Name was Answer of Respondent Bethel SD to Petition for Discretionary Review.pdf*

**A copy of the uploaded files will be sent to:**

- EStahlfeld@freedomfoundation.com
- chads@atg.wa.gov
- diane.graf@atg.wa.gov
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- heather.wulf@ATG.WA.GOV
- jmatheson@freedomfoundation.com
- john.meader@atg.wa.gov
- ksomerville@vjglaw.com
- lawyer@stahlfeld.us
- rbouvatte@freedomfoundation.com

**Comments:**

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