UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Kenneth Alvarez, Carol Shetler, William Vaughn, and Raul Flores, Individual Providers in Washington, Plaintiffs, v. GOVERNOR JAY INSLEE, in His Official Capacity as Governor of the State of Washington; KEVIN W. QUIGLEY in His Official Capacity as Director of the Washington Department of Social and Health Services ("DSHS"), SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE 775NW ("SEIU 775"), a labor organization; Defendants.	NO. 3:16-cv-5111 **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This case seeks to enforce First Amendment protections against compelled receipt of speech. The State is compelling Kenneth Alvarez, Carol Shetler, William Vaughn, and Raul Flores ("Plaintiffs") and all other Washington State individual providers ("IPs") to receive Defendant SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE 775NW

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("SEIU")'s speech by 1) forcing, or constructively forcing, a captive audience of IPs to meet with SEIU and listen to its private, pro-union speech as part of IPs' mandatory training; 2) compelling a captive audience of IPs to receive SEIU's private, pro-union speech by devoting certain areas of State offices that IPs "necessarily frequent due to work-related business" to SEIU bulletin boards and attached leaflets; 3) forcing a captive audience of IPs to receive SEIU's private, pro-union speech by devoting certain spaces on IPs' mandatory payroll system to SEIU messages.

2. Plaintiffs allege that compelled receipt of SEIU speech via mandatory meetings with SEIU, SEIU bulletin boards strategically placed in State offices "necessarily frequented" for IP work-related business, and SEIU messages on a required State payroll system, violates their rights under the First Amendment to the United States Constitution, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, against compelled speech and the right to receive speech. This case concerns whether it is constitutional for a State to compel citizens, or constructively compel citizens, to listen to and receive private, content-based and viewpoint-based speech.

3. This is a civil rights case pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief. Defendants are state actors acting under the color of state law—specifically, RCW 74.39A.360, RCW 74.39A.074, RCW 79.39A.341, the 2015-2017 Collective Bargaining Agreement ("2015-2017 CBA") between the Department of Social and Health Services ("DSHS") and SEIU, and the Memorandum of Understanding Between the State of Washington and SEIU 775 dated April 4, 2016 ("Memorandum of Understanding"). Defendants have been depriving and continue to deprive Plaintiffs and similarly situated IPs of their rights, privileges, and immunities against compelled speech and the right to receive and listen to speech under the First and Fourteenth Amendments of the United States Constitution.

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4. This case also seeks to enforce the Washington Constitution, Art. 8 § 5, which prohibits the State from giving or loaning its credit to any association. The State, pursuant to the 2015-2017 CBA and the Memorandum of Understanding, has spent and will continue to spend thousands of dollars of public funds in compelling IPs to meet with SEIU during State-funded work hours, where SEIU provides nothing in exchange for such forced meetings. Thus, this case also concerns whether it violates Washington constitutional law when the State gives publicly-funded time and space to private unions.

5. This case also seeks to enforce RCW 42.52.160, which prohibits state officers and employees from using any persons, money or property under the officer's official control, for the benefit or gain of another beyond a de minimis use. The State, pursuant to the 2015-2017 CBA and the Memorandum of Understanding, has provided and will continue to provide SEIU with free use of State's facilities, websites, organizational efforts, IP information packets and payroll systems for SEIU's private gain. Thus, this case also concerns whether it violates Washington statutory law when the State allows private entities unfettered and ongoing access to its public resources for the private entity's gain.

6. Plaintiffs are IPs who receive state subsidies for the care they provide.

7. Plaintiffs bring this suit to enjoin and declare facially unconstitutional, under the First Amendment of the United States Constitution, Arts. 2.3, 2.4, 2.8 and 15.13(A) of the 2015-2017 CBA to the extent that those provisions compel IPs to listen to and receive private, pro-union speech.

8. Plaintiffs bring this suit to enjoin and declare unconstitutional, as applied, the Memorandum of Understanding, where the State and SEIU 775 agreed to delete the terms of

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Article 2.3 and 15.13(A) of the 2015-2017 Collective Bargaining Agreement and substitute a new Article 2.3 and 15.13(A).

9. Plaintiffs also bring this suit to enjoin and declare illegal Arts. 2.3-2.8 and 15.13(A) of the 2015-2017 CBA, and Arts. 2.3 and 15.13 A of the Memorandum of Understanding, to the extent that those provisions require the State to expend public resources for SEIU's private gain.

10. Finally, Plaintiffs bring this suit to enjoin and declare unconstitutional, under the Washington Constitution, Article 15.13(A) of the 2015-2017 CBA, and Article 15.13(A) of the Memorandum of Understanding, to the extent that the State spends thousands of dollars in forcing IPs to meet with SEIU and SEIU provides nothing in exchange.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, because it arises under the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. § 1343, because Plaintiffs seek relief under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, and because "[t]he state and federal claims…derive from a common nucleaus of operative fact." *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966). Additionally, this Court should consider both the federal and state claims because doing so increases judicial econonomy as well as convenience and fairness to the litigants. *See Gibbs*, 383 U.S. at 726. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief for Plaintiffs, including preliminary and permanent injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district and Defendants do business and operate in this judicial district. Intradistrict

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assignment to the Tacoma Division is proper because the claims arose in Thurston County. Local Civil Rule 3(d).

III. PARTIES

13. Kenneth Alvarez has worked as an Individual Provider since March of 2015 and provides care to his fiancé.

14. Carol Shetler has worked as an Individual Provider since approximately 1998 and provides care to her son.

15. William Vaughn has worked as an Individual Provider since March of 2016.

16. Raul Flores has worked as an Individual Provider since July of 2016 and provides care to his nephew.

17. Defendant Jay Inslee is Governor of Washington and is sued in his official capacity. As Governor, Defendant Inslee is Washington's chief executive officer and IPs' employer "solely for the purposes of collective bargaining" pursuant to RCW 74.39A.270.

18. Defendant Patricia Lashway is the Director of the Washington Department of Social and Health Services ("DSHS"), and is sued in her official capacity. DSHS is the state agency responsible for administering personal care services under the State's various Medicaid programs.

19. SEIU is a labor union conducting business and operations throughout the State of Washington with its headquarters located at 1914 N 34th Street, Suite 100, Seattle, WA 98103. SEIU is the exclusive bargaining representative of Individual Providers pursuant to RCW 74.39A.270(2)(a), RCW 41.56.028, and *In re SEIU Local 775*, Decision 8241 at 2 (Oct. 9, 2003).

IV. FACTUAL ALLEGATIONS

A. Individual Providers and the State of Washington

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20. Individual Providers ("IPs") provide "personal care or respite care services," to persons who qualify for care assistance from the Department of Social and Health Services ("DSHS"). RCW 74.39A.240(3). Clients or consumers are elderly or disabled persons who have applied or are currently receiving services from DSHS. WAC 388-106-0010. Personal care services include "physical or verbal assistance with activities of daily living and instrumental activities of daily living due to… functional limitations." *Id*.

21. DSHS pays IPs for the services they provide to the clients.

22. Plaintiff Kenneth Alvarez has worked as an IP since March of 2015 and provides care to his fiancé.

23. Plaintiff Carol Shetler has worked as an IP since approximately 1998 and provides care to her son.

24. Plaintiff William Vaughn has worked as IP since March of 2016.

25. Plaintiff Raul Flores has worked as an IP since July of 2016 and provides care to his nephew.

B. The 2015-2017 CBA between SEIU and the State of Washington dictates IPs' terms and conditions of employment.

26. IPs are public employees "solely for the purposes of collective bargaining" and have been organized into a single statewide bargaining unit. RCW 74.39A.270.

27. SEIU is the exclusive representative of the IP bargaining unit. *See In re: Service Employees International Union, Local 775*, Decision 8241 Case 17799-E-03-2876 (PECB, 2003).[1]

[1] Available at http://www.perc.wa.gov/databases/rep_uc/08241.htm (last visited on Oct. 8, 2015).

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28. As the exclusive representative of the IP bargaining unit, SEIU engages in collective bargaining with the State of Washington, as represented by the governor or the governor's designee. *See* RCW 41.80.005(2); 41.80.010(1).

29. "'Collective bargaining' means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of bargaining specified under RCW 41.80.020." RCW 41.80.005(2); RCW 41.56.030(4). However, "[t]he obligation to bargain does not compel either party to agree to a proposal or to make a concession." RCW 41.80.005(2).

C. The State, through the 2015-2017 CBA, compels IPs to receive SEIU's speech by forcing a captive audience of IPs to: 1) meet with SEIU during mandatory IP contracting appointments, basic training, and continuing legal education classes; 2) receive SEIU's speech on bulletin boards that IPs "necessarily frequent" and 3) receive SEIU's speech on a State-required payroll system.

30. SEIU is a private entity.

31. The 2015-2017 CBA and the Memorandum of Understanding provides SEIU with multiple instances of exclusive access to IPs for the purposes of disseminating pro-union speech during portions of mandatory events that Plaintiffs and all other similarly situated IPs must complete as a condition of employment.

i. SEIU's Speech During Mandatory Contracting Appointments

32. Pursuant to Article 2.3 of the 2015-2017 CBA and the Memorandum of Understanding, SEIU—and only SEIU—receives 15 minutes from the State to meet with Plaintiffs and other similarly situated IPs during contracting appointments.[2]

[2] Article 2.3 of the 2015-2017 CBA: "Access to Contracting Appointments and Safety and Orientation Trainings. The employer and its agents will take steps to consolidate contracting appointments into one (1) or two (2) designated days of the week, and will inform the Union of the designated days for each office. However, the parties acknowledge that in some cases due to emergent or unanticipated matters, individual providers may complete the

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33. Plaintiffs and other similarly situated IPs must attend contracting appointments as a condition of employment.

34. In the meetings with SEIU during contracting appointments, Plaintiffs must, or are made to believe they must, listen to and receive SEIU's private speech, which is unrelated to client-care training.

ii. SEIU's Speech During Mandatory Basic Training

35. Pursuant to Article 15.13(A) of the 2015-2017 CBA and Memorandum of Understanding, SEIU—and only SEIU—receives 30 minutes from the State to meet with Plaintiffs and other similarly situated IPs during basic training "for a presentation on Union issues."[3]

36. Plaintiffs and other similarly situated IPs must attend basic training, provided by SEIU Healthcare NW Training Partnership, as a condition of employment.[4]

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tasks ordinarily covered in the contracting appointments outside of the designated day(s) for that particular office. In these exceptional circumstances the State will, on at least a weekly basis, provide a list to the Union of employees that did not attend contracting appointments on designated days. *The State will also provide fifteen (15) minutes for a Union representative to meet with the individual provider(s) participating in the contracting appointments.* If the state office has regularly scheduled recurring times for individual providers to view the initial safety and orientation training, the State will make the Union aware of these reoccurring meetings on an annual basis. The State will also provide fifteen (15) minutes for a Union representative to meet with the individual provider(s)." (emphasis added).

[3] Article 15.13(A) of the 2015-2017 CBA: "Access to Training. (A) Union Presentation Compensation. The parties agree that the Training Partnership shall provide the Union with reasonable access to its training classes, including providing the Union with technical support for online learning, in order for the Union to make presentation on Union issues. The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. The Employer agrees to compensate up to fifteen (15) minutes of time annually for a presentation on Union issues to all individual providers receiving the Union portion of required continuing education. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer."

[4] *See* RCW 74.39A.074 ("all persons hired as long-term care workers *must meet the minimum training requirements in this section*…Before a long-term care worker is eligible to provide care, he or she must complete…Seventy hours of long-term care basic training") (emphasis added); *Individual Providers, Signing Up for Long-Term Care Worker Training*, WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (last accessed Feb. 7, 2016), *available at* https://www.dshs.wa.gov/altsa/home-and-community-services/individual-providers; *Checklist to become a Individual Provider Home Care Aide Certified* (last accessed Feb. 7, 2016) *available at* https://www.dshs.wa.gov/sites/default/files/ALTSA/training/HCA%20Checklist%20for%20IP.pdf; *What Training Do I Need*, MYSEIUBENEFITS.ORG (last accessed Feb. 7, 2016), *available at* http://www.myseiubenefits.org/training/what-training-do-i-need/.

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37. The State pays Plaintiffs and similarly situated IPs to attend mandatory meetings, or constructively mandatory meetings, with SEIU.[5]

38. In the mandatory meetings with SEIU during basic training, Plaintiffs must, or are made to believe they must, listen to and receive SEIU's private speech, which is unrelated to client-care training.

iii. *SEIU's Speech During Mandatory Continuing Education Classes*

39. Pursuant to Article 15.13(A) of the 2015-2017 CBA and the Memorandum of Understanding, SEIU—and only SEIU—receives 15 minutes from the State to meet with Plaintiffs and other similarly situated IPs during continuing education classes "for a presentation on Union issues."[6]

40. Plaintiffs and other similarly situated IPs must attend continuing education classes as a condition of employment.[7]

41. In the mandatory meetings with SEIU during continuing education classes, Plaintiffs must, or are made to believe they must, listen to and receive SEIU's private speech.

iv. *SEIU's Speech During Mandatory Bulleting Boards "Necessarily Frequented"*

[5] *See supra* note 3.
[6] *Id*.
[7] *See* RCW 74.39A.341 ("All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year…Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification"); *Individual Providers, Signing Up for Long-Term Care Worker Training*, WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (last accessed Feb. 7, 2016), *available at* https://www.dshs.wa.gov/altsa/home-and-community-services/individual-providers; *Checklist to become a Individual Provider Home Care Aide Certified* (last accessed Feb. 7, 2016) *available at* https://www.dshs.wa.gov/sites/default/files/ALTSA/training/HCA%20Checklist%20for%20IP.pdf; *What Training Do I Need*, MYSEIUBENEFITS.ORG (last accessed Feb. 7, 2016), *available at* http://www.myseiubenefits.org/training/what-training-do-i-need/.

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42. Pursuant to Article 2.4 of the 2015-2015 CBA, SEIU—and only SEIU—receives "bulletin board space in the offices of the Employer, its agencies, contractors, or subcontractors" from the State.[8]

43. The bulletin boards are placed in locations that Plaintiffs and other similarly situated IPs must "necessarily frequent due to work-related business."[9]

v. *SEIU's Speech On A Mandatory Payroll System*

44. Pursuant to Article 2.8 of the 2015-207 CBA, SEIU—and only SEIU—receives space on the State-mandated online payroll system to place a link to SEIU's website and display SEIU notification messages when IPs login.[10]

45. Plaintiffs and other similarly situated IPs must soon use the State-sponsored online payroll system to receive payment when it is set up in the coming weeks.

vi. State's content-based and viewpoint based regulations allowing SEIU's speech at mandatory meetings, on state bulletin boards, and on a payroll system

46. During the State-mandated contracting appointments, basic training, and continuing education classes, SEIU promotes its organization, solicits funding, solicits

[8] 2015-2017 CBA Art. 2.4: "Union Bulletin Boards. The Union shall have a right to bulletin board space in the offices of the Employer, its agencies, contractors, or subcontractors that individual providers necessarily frequent due to work-related business. The Union shall be solely responsible for the costs and maintenance of all bulletin boards. The Union will provide bulletin boards (no larger than two feet by three feet [2'x3']). The bulletin boards will be clearly marked as Union bulletin boards and will be maintained by Union worker representatives and/or Union staff. Union communications may not be posted in any other location or agency."

[9] *Id*.

[10] Article 2.8 of the 2015-2017 CBA: "Union Communication through Payroll Website. (A) Link to Employer Website. The Employer shall display a link to the Union website on the opening webpage of the online payroll website. The landing page for the Union website link supplied on the payroll website must be in compliance with Chapter RCW 45.52. (B) Notification of Message from Union. When a home care worker logs into the payroll website, the initial screen will include a notification of new message(s) from the Union. The notification box on the initial page shall be sufficient to provide detail of sender and subject of the message. The subject matter and content of the notification message shall be in conformance with Chapter RCW 42.52. The Union shall provide materials to be included in the notification message no later than twenty-one (21) days prior to the day the notification will be sent."

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membership, solicits donations to political committees, and extols its positions on matters of public concern.

47. SEIU's speech on bulletin boards promotes its organization and extols its positions on matters of public concern.

48. SEIU's speech on the online payroll system promotes its organization and extols its positions on matters of public concern.

49. Arts. 2.3, 15.13(A), 2.4, and 2.8 of the 2015-2017 CBA, and Arts. 2.3 and 15.13(A) of the Memorandum of Understanding, *only* permit SEIU speakers who disseminate SEIU's speech on union-related issues. No other speaker is required or allowed under the 2015-2017 CBA or the Memorandum of Understanding.[11]

50. Neither union membership nor the payment of any dues or fees to SEIU is a condition for Plaintiffs, or any IP, to receive reimbursements/pay.

51. Plaintiffs cannot avoid, or are made to believe that they cannot avoid, listening to or receiving SEIU's speech during contracting appointments, basic training, and continuing education classes nor on bulletin boards when visiting State offices or using the online payroll system.

52. Plaintiffs object to being compelled to listen to and receive SEIU's speech every time they and other similarly situated IPs undergo contracting appointments, basic training, continuing education classes, visit State offices for work-related business, or use the online payroll system.

[11] *See Rosenberger v. Rector and Visitors of VA*, 515 U.S. 819, 828 (1995) ("In the realm of private speech or expression, government regulation may not favor one speaker over another."); *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228 (2015) ("It is a fundamental precept of the First Amendment that the government cannot favor the rights of one speaker over those of another."); *American Freedom Defense Initiative v. Southeastern Pennsylvania Transp. Authority*, 92 F. Supp. 314, 324 (E.D. Pen. 2015) ("if the government allows speech on a certain subject in any forum, it must accept all viewpoints on the subject, even those that it disfavors or finds unpopular.")

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53. Freedom Foundation requested the State for the same speaking privileges and access to IPs as the State gave SEIU pursuant to the 2015-2017 CBA on January 20, 2015. Although the Foundation holds a different viewpoint than SEIU, it requested the opportunity to speak on the same content on which SEIU spoke—i.e., union related issues. The Foundation requested a response by February 1, 2015, and stated that a lack of a response would be construed as a denial. The State failed to respond by February 1, 2015, and has since denied the Foundation's request to speak on the same content but with a different viewpoint.

D. The State, through the 2015-2017 CBA, gives its money in the aid of SEIU.

54. Pursuant to Article 15.13 of the 2015-2017 CBA and Memorandum of Understanding, the State pays IPs to attend 15-and 30-minute mandatory meetings with SEIU during basic training and continuing education classes.[12]

55. IPs' wages range from $11.31 to $15.53 dollars per hour.[13]

56. Thousands of IPs undergo basic training and continuing education classes each year.

57. The State spends thousands of dollars of public funds in forcing IPs to attend meetings with SEIU in 15- and 30-minute appointments during basic training and continuing classes.

58. Forcing IPs to meet with and receive SEIU's speech during basic training and continuing education classes does not further any fundamental government purpose.

59. SEIU does not provide any consideration for IPs' paid time it receives from the State.

[12] *See supra* note 3.
[13] 2015-2017 CBA, Appendix A, Available at http://www.ofm.wa.gov/labor/agreements/15-17/nse_homecare.pdf (last visited Nov. 23, 2015).

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E. The State, through the 2015-2017 CBA, uses its employees, money and property for the private benefit of SEIU.

60. The State is the employer of IPs solely for the purposes of collective bargaining.[14]

61. The 2015-2017 CBA establishes agency-wide rules for DSHS. Thus, DSHS employees' use of public resources for the benefit of SEIU is not limited to any particular DSHS employee, but rather indicative of agency pattern and practice.

i. State's use of State employee time for the aid of SEIU

62. Pursuant to **Article 2.3** of the 2015-2017 CBA and Memorandum of Understanding, the State gives SEIU 15 minutes of IPs' time during contracting appointments.

63. Pursuant to **Article 15.13(A)** of the 2015-2017 CBA and Memorandum of Understanding, the State gives SEIU 30 minutes of publicly funded time to meet with IPs during basic training.

64. Pursuant to **Article 15.13(A)** of the 2015-2017 CBA and Memorandum of Understanding, the State gives SEIU 15 minutes of publicly funded time to meet with IPs during continuing education classes.

65. The State organizes and hosts required contracting appointments several times throughout the year.

66. State-required basic training and continuing education classes occur several times throughout the year.

67. It does not fall within the State's official duties to force, or constructively force, IPs to listen to pro-union speech for 15 minutes at every contracting appointment, 30 minutes during basic training, and 15 minutes for every continuing education session—speech which promotes

[14] RCW 74.39A.270.

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SEIU's organization, solicits funding, solicits membership, solicits donations to political committees, and extols SEIU's positions on matters of public concern.

68. SEIU's privilege to meet with IPs during contracting appointments, basic training, and continuing education classes is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

ii. State's use of State property for the aid of SEIU

69. Pursuant to **Article 2.4** of the 2015-2017 CBA, the State allows SEIU bulletin boards filled with SEIU materials in State offices that IPs "necessarily frequent" for work related matters.[15]

70. It does not fall within the State's official duties to subject IPs to SEIU's pro-union speech when visiting the "necessarily frequented" State offices—speech which promotes SEIU's organization and extols its positions on matters of public concern.

71. SEIU's privilege to hang bulletin boards on State property is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

72. Pursuant to **Article 2.5** of the 2015-2017 CBA, the State allows SEIU to post links on State websites to SEIU's website.[16]

73. It does not fall within the State's official duties to allow, on State websites, links to SEIU's website which promotes SEIU's organization, solicits funding, solicits membership, solicits donations to political committees, and extol SEIU's positions on matters of public concern.

[15] *See supra* note 8.

[16] Article 2.5 of the 2015-2017 CBA: "Websites. Websites maintained by the Department of Social and Health Services (DSHS), Aging and Long-Term Support Administration (ALTSA) and Developmental Disabilities Administration (DDA) that individual providers might reasonably access to seek employment-related information shall contain a link to the Union's website, provided that the link is in compliance with Chapter RCW 42.52."

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74. SEIU's privilege to post links on State websites to SEIU's own websites is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

75. Pursuant to **Article 2.8(A)** of the 2015-2017 CBA, the State must display a link to SEIU's website in the opening webpage of the online payroll website.[17]

76. Pursuant to **Article 2.8(B)** of the 2015-2017 CBA, the State-mandated online payroll system requires that the initial screen will include a notification of new messages from SEIU.

77. It does not fall within the State's official duties to allow, on State-mandated online payroll system, links to SEIU's website and SEIU messages which promotes SEIU's organization, solicits funding, solicits membership, solicits donations to political committees, and extol SEIU's positions on matters of public concern.

78. SEIU's privilege to post links on State-mandated online payroll systems and provide notification messages to all IPs logging on to the online payroll system is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

iii. State's use of State money in the aid of SEIU

79. Pursuant the **Article 2.7** of the 2015-2017 CBA, the State must include SEIU materials in State-paid paid envelopes mailed to out IPs.[18]

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[17] *See supra* note 10.

[18] Article 2.7 of the 2015-2017 CBA: "Access to Pay Envelopes. The Employer agrees to include information provided by the Union in pay envelopes sent to individual providers, subject to the following conditions: A. The Union shall provide such materials to the Department no later than thirty (30) calendar days prior to the first day upon which the Union requests that the materials be included in pay envelopes mailed to individual providers. B. Except by consent of the Employer, the size and weight of such materials to be included in the pay envelopes for any pay period shall not exceed two (2) pieces of printed materials, one (1) of which may be no larger than eight and one-half inches by eleven inches (8.5"x11") and no heavier than twenty pound (20lb.) weight, and the other of which may be a pre-printed number ten (#10) or smaller return envelope of standard weight. C. The subject matters and contents of any materials provided shall be in conformance with Chapter RCW 42.52. D. The Union agrees to reimburse the Department *for any increase* in postage costs arising from the inclusion of the Union materials. E. When feasible, the Employer shall provide the Union at least fourteen (14) days advance notice prior to sending a mail communication to the entire individual provider group. In the event fourteen (14) days advance notice is not feasible, the Employer will send the notice to the Union as soon as possible, but at a minimum, at the same time the

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80. It does not fall within the State's official duties to include private, pro-union speech in State-funded mailed packages at no cost to SEIU.

81. SEIU's privilege to mail its materials paid for by the State is ongoing and throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

F. Upon the filing of the Foundation's first Complaint, The State and SEIU 775 subsequently agreed to revisions of Art. 2.3 and 15.13 of the CBA, which still fail to remedy the underlying concerns.

82. On April 4, 2016, the State and SEIU 775 agreed on a Memorandum of Understanding.

83. The Memorandum of Understanding deleted Articles 2.3 and 15.13(A) of the 2015-2017 CBA and substituted new Articles 2.3 and 15.13(A).

84. Under the Memorandum of Understanding, Art. 2.3(C) states that "Individual providers will not be required to meet with Union representatives and will suffer no discrimination or retaliation as a result of their choice to meet or not to meet. The Employer will remain neutral, and will not either encourage individual providers to meet or discourage them from meeting with Union representatives."

85. Under the Memorandum of Understanding, Art. 15.13(A) states that "The parties agree that the Training Partnership shall provide the Union with reasonable access to its training classes, including providing the Union with technical support for online learning, in order for the Union to make a presentation concerning the Union and individual providers' rights and benefits ("Union issues"). The content of the presentation will be determined solely by the Union, but will not include urging support or opposition to any political candidate or ballot measure, and will be in compliance with RCW 42.52.160 and .180. The Employer agrees to compensate up to thirty

notice is sent to the entire individual provider group." (emphasis added).

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(30) minutes of time for a presentation on Union issues to all individual providers attending the Union portion of required basic training. The Employer agrees to compensate up to fifteen (15) minutes of time annually for a presentation on Union issues to all individual providers attending the Union portion of required continuing education. Individual providers are not required to attend the Union presentations, and will suffer no retaliation or discrimination as a result of their choice to attend or not to attend. Any additional time for presentations on Union issues agreed upon between the Union and the Partnership shall not be compensated by the Employer."

86. There is no provision in the Memorandum which requires the State or Union to inform individual providers they are not required to attend, whether individual providers are told at the required appointment or required training, or through some other medium at another time.

IV. CLAIMS FOR RELIEF

COUNT I

The State violates Plaintiffs' and similarly situated IPs' First Amendment rights by compelling, or appearing to compel, a captive audience of IPs to receive SEIU's pro-union speech in three ways: i) by mandating, or appearing to mandate, meetings with SEIU in contracting appointments, basic training, and continuing education classes, ii) by SEIU bulletin boards in State offices "necessarily frequented" by IPs for work-related matters; and iii) by SEIU links and notification messages on mandatory payroll systems.

87. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above.

88. The First Amendment to the United States Constitution, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, guarantees each individual a right to choose whether, how, and with whom she or he engages in speech. One of the paramount concerns undergirding the First Amendment is the freedom of thought. To preserve freedom of thought, the First Amendment protects the right to speak, the right to receive speech, and the right against compelled speech.

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89. The State infringes on these First Amendment rights, and IPs' freedom of thought, when it implements content or viewpoint based policies that compels, or appears to compel, a captive audience of IPs to receive private, pro-union speech. Captive audiences are audiences that 1) cannot readily avoid speech, and 2) should not have to avoid that speech (i.e. have a certain need or right to be present in the space where the speech is delivered). If compelled speech is content based, it must withstand strict scrutiny to be constitutional under the First Amendment. Regulations concerning speech can only withstand strict scrutiny if it is 1) narrowly tailored 2) to serve a compelling government interest. Finally, speech is not "government speech" when it concerns a private message not controlled by the government.

90. SEIU is a private entity that speaks on its own, private behalf and not on behalf of the government.

i. ***Mandatory Meetings***

91. Pursuant to **Article 2.3** of the 2015-2017 CBA and Article 2.3 of the Memorandum of Understanding, SEIU—and only SEIU—receives 15 minutes from the State to meet with Plaintiffs and other similarly situated IPs during contracting appointments.

92. Pursuant to **Article 15.13(A)** of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding, SEIU—and only SEIU—receives 30 minutes from the State to meet with Plaintiffs and other similarly situated IPs during basic training "for a presentation on Union issues."

93. Pursuant to **Article 15.13(A)** of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding, SEIU—and only SEIU—receives 15 minutes from the State to meet with Plaintiffs and other similarly situated IPs during continuing education classes "for a presentation on Union issues."

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94. During the contracting appointments, basic training, and continuing education classes, Plaintiffs and similarly situated IPs cannot readily avoid SEIU's speech.

95. Plaintiffs must attend the contracting appointments, basic training, and continuing education classes and must listen to and receive, or are made to believe that they must listen to and receive, SEIU's speech during the contracting appointments, basic training, and continuing education classes as a condition of employment.

96. During the State-mandated contracting appointments, basic training, and continuing education requirements, SEIU promotes its organization, solicits funding, solicits membership, solicits donations to political committees, and extols its positions on matters of public concern.

97. The State denied the Freedom Foundation, a Washington nonprofit organization, the same speaking privileges it gives to SEIU during contracting appointments, basic training, and continuing education classes where the Foundation requested to speak on the same content regarding similar union-related issues. SEIU's presentations are content based and viewpoint based in favor of a pro-union viewpoint.

98. No compelling state interest justifies compelling IPs to meet with SEIU—and only SEIU—to receive and listen to pro-union speech during contracting appointments, basic training, and continuing education classes.

99. Forcing, or constructively forcing, IPs to meet with SEIU is not narrowly tailored to any State interest.

100. The State does not control the message SEIU gives to IPs during its presentations at contracting appointments, basic training, and continuing education classes.

iv. *SEIU Bulletin Boards*

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101. Pursuant to **Article 2.4** of the 2015-2015 CBA, SEIU—and only SEIU—receives "bulletin board space in the offices of the Employer, its agencies, contractors, or subcontractors" from the State.

102. When visiting the offices of the Employer, its agencies, contractors or subcontractors, IPs cannot readily avoid SEIU's speech displayed on the bulletin boards.

103. SEIU places its bulletin boards in State offices that IPs "necessarily frequent" for work-related business.

104. On SEIU's bulletin boards, SEIU promotes its organization and extols its positions on matters of public concern. The State denied the Foundation the same speaking privileges it gives to SEIU on bulletin boards, where the Foundation requested to speak on the same content regarding similar union-related issues. Thus, SEIU's presentations are content based and viewpoint based in favor of a pro-union viewpoint.

105. No compelling state interest justifies the State in forcing a captive audience of IPs to receive SEIU speech on bulletin boards when visiting State office for employment related matters.

106. Forcing a captive audience of IPs receive SEIU's speech on bulletin boards in State offices is not narrowly tailored to any State interest.

107. The State does not control the message SEIU gives to IPs on its bulletin boards.

v. *SEIU Web Links and Notifications on the Online Payroll System*

108. Pursuant to Article 2.8 of the 2015-2017 CBA, SEIU—and only SEIU—receives space on the State-mandated online payroll system to place a link to SEIU's website and display SEIU notification messages when IPs login.

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109. When using the online payroll system, Plaintiffs and similarly situated IPs will not be able to readily avoid SEIU's speech.

110. Plaintiffs and similarly situated IPs must use the online payroll system in order to get paid.

111. SEIU's website connected by the link on the online payroll system, and the notifications on the online payroll system, promote its organization, solicit funding, solicit membership, solicit donations to political committees, and extol its positions on matters of public concern. The State denied the Foundation the same speaking privileges it gives to SEIU on the online payroll system, where the Foundation requested to speak on the same content regarding similar union-related issues but with a different viewpoint. Thus, SEIU's presentations are content based and viewpoint based in favor of a pro-union viewpoint.

112. No compelling state interest justifies the State in forcing IPs to receive SEIU speech on the State-required payroll system.

113. Forcing IPs to receive SEIU speech on the State-required payroll system is not narrowly tailored to any State interest.

114. The State does not control the message SEIU gives to IPs on the State-required online payroll system.

115. By and through **Articles 2.3, 15.13(A), 2.4, and 2.8** of the 2015-2017 CBA, and Articles 2.3 and 15.13(A) of the Memorandum of Understanding, the State has deprived, and will continue to deprive, Plaintiffs of their constitutional right against compelled speech and the right to receive speech by compelling, or constructively compelling, listening to content-based and viewpoint based speech, in violation of the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983. By giving SEIU time and

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space to promote its organization and views, the State forces a captive audience of Plaintiffs and thousands of other similarly situated IPs to listen to and receive SEIU's private, content and viewpoint-based speech.

116. **Articles 2.3 and 15.13(A)** of the 2015-2017 CBA are unconstitutional facially and as applied to Plaintiffs and other similarly situated IPs.

117. **Articles 2.3 and 15.13(A)** of the Memorandum of Understanding are unconstitutional as applied to Plaintiffs and other similarly situated IPs.

118. **Articles 2.4 and 2.8** of the 2015-2017 CBA are unconstitutional facially and as applied to Plaintiffs and other similarly situated IPs.

COUNT II

The State's expenditures in forcing IPs to meet with SEIU, when SEIU provides nothing in exchange, violates WA CONST. ART. 8, §5.

119. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above.

120. Article 8, § 5 of the Washington Constitution prohibits **1)** the credit of the state, in any manner, **2)** being given or loaned to, or in the aid of, **3)** any individual, association, company or corporation.

121. Unconstitutional gifts are those **i)** not expended to carry out a fundamental governmental purpose; and **ii)** given with donative intent *or* for a grossly inadequate return.

122. The purpose of Washington's constitutional prohibition against gifts or loans of the state's credit to assist private business is to prevent state funds from being used to benefit private interests where the public interest is not primarily being served.

123. IPs are public employees solely for the purpose of collective bargaining.

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124. Pursuant to Article 15.13 of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding, the State pays IPs to attend 15-and 30-minute mandatory meetings with SEIU during basic training and continuing education classes.

125. The State spends thousands of dollars of public funds in forcing IPs to attend meetings with SEIU in 15- and 30-minute appointments during basic training and continuing classes.

126. Forcing, or constructively forcing, IPs to meet with and receive SEIU's speech during basic training and continuing education classes does not further any fundamental government purpose.

127. SEIU does not provide any consideration for IPs' paid time it receives from the State. Lack of consideration is grossly inadequate consideration.

128. By and through Article 15.13(A) the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding, the State has illegally gifted, and will continue to illegally gift, thousands of dollars to SEIU without SEIU providing anything in exchange, in violation of WA. CONST. ART. 8, § 5.

129. Article 15.13(A) of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding is unconstitutional under WA. CONST. ART. 8, § 5, both facially and as applied to Plaintiffs.

COUNT III

The State's use of its employees, money and property for the private benefit of SEIU violates RCW 42.52.160.

130. Plaintiffs re-alleges and incorporates by reference the paragraphs set forth above.

131. RCW 42.52.160 prohibits 1) state officers or employees 2) from using any person, money or property under the officer or employee's official control or direction 3) for the private

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benefit or gain of another, 4) *other than* a) uses which fall under the state officer's or state employee's official duties or b) qualify as "de minimis" use for specified purposes or enumerated exceptions.

132. SEIU is a private entity that speaks on its own, private behalf and not on behalf of the government.

133. The 2015-2017 CBA establishes agency-wide rules for DSHS, and DSHS employees' use of public resources for the benefit of SEIU is not limited to any particular DSHS employee, but rather indicative of agency pattern and practice.

134. The scope of collective bargaining is limited to "wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement." RCW 41.80.020(1). Thus, public resources spent in the aid of SEIU lie beyond the scope of collective bargaining and the State's official duties.

i. *State's use of State employee time for the aid of SEIU*

135. Pursuant to Article 2.3 and 15.13(A) of the 2015-2017 CBA and Article 2.3 and 15.13(A) of the Memorandum of Understanding, the State gives 15-minutes and 30-minutes of IPs' time during contracting appointments, basic training, and continuing education classes.

136. SEIU's compelled, or apparently compelled, meetings with IPs benefits SEIU by forcing, or appearing to force, IPs to listen to and receive pro-union speech.

137. It does not fall within the State's official duties to force, or constructively force, IPs to listen to pro-union speech for 15- and 30 minutes at every contracting appointment, basic training, and continuing education session—speech which promotes SEIU's organization, solicits funding, solicits membership, solicits donations to political committees, and extols SEIU's positions on matters of public concern.

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138. The contracting appointments, basic training, and continuing education classes where the State gives SEIU 15- and 30-minute blocks of time occur several times throughout the year, above and beyond de minimis use.

ii. *State's use of State property for the aid of SEIU*

139. Pursuant to **Article 2.4** of the 2015-2017 CBA, the State allows SEIU bulletin boards filled with SEIU materials in State offices that IPs "necessarily frequent" for work related matters.

140. SEIU's bulletin board spaces benefits SEIU by forcing a captive audience to receive SEIU speech on its bulletin boards.

141. It does not fall within the State's official duties to subject IPs to SEIU's pro-union speech when visiting the "necessarily frequented" State offices—speech which promotes SEIU's organization and extols its positions on matters of public concern.

142. SEIU's privilege to hang bulletin boards on State property is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

143. Pursuant to **Article 2.5** of the 2015-2017 CBA, the State allows SEIU to post links on State websites to SEIU's website.

144. SEIU's links on the State's websites benefits SEIU by 1) providing SEIU with immediate and automatic access to all IPs at little or no cost to SEIU; 2) adding an illusion of imprimatur of the State to the SEIU website at little or no cost to SEIU; 3) driving internet traffic to SEIU's website, which increases exposure to SEIU's promotional materials and advertising schemes geared to increase union membership, solicit donations to political committees, and extol SEIU's positions on matters of public concern.

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145. It is not within the State's official duties to provide free web space on highly prominent, frequently visited and publicly funded websites, or promote union membership, donations to political committees, or SEIU's positions on matters of public concern.

146. SEIU's privilege to post links on State websites to SEIU's own websites is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

147. Pursuant to **Article 2.8(A)** of the 2015-2017 CBA, the State must display a link to SEIU's website in the opening webpage of the online payroll website.

148. Pursuant to **Article 2.8(B)** of the 2015-2017 CBA, the State-mandated online payroll system requires that the initial screen will include a notification of new messages from SEIU.

149. It does not fall within the State's official duties to allow, on State-mandated online payroll system, links to SEIU's website and SEIU messages which promotes SEIU's organization, solicits funding, solicits membership, solicits donations to political committees, and extol SEIU's positions on matters of public concern.

150. SEIU's privilege to post links on State-mandated online payroll systems and provide notification messages to all IPs logging on to the online payroll system is ongoing throughout the term of the 2015-2017 CBA, over and beyond de minimis cost and value.

iii. *State's use of State money in the aid of SEIU*

151. **Art. 2.7** of the 2015-2017 CBA requires State pay envelops, sent to IPs, to include SEIU materials containing SEIU's speech and consisting of an 8.5 x 11' sheet and pre-printed number 10 return envelope.

152. Requiring publicly-funded mailings to include SEIU materials benefits SEIU by 1) allowing SEIU to send its materials to IPs for free absent an increase in postage costs; 2) adding

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an illusion of imprimatur of the State to SEIU's materials; 3) increasing IPs' exposure to union materials at little or no cost to SEIU.

153. It is not within the State's official duties to provide union materials to IPs in State mailings, or promote union membership, donations to political committees, or SEIU's positions on matters of public concern.

154. SEIU's materials in State pay envelopes extend beyond de minimis use.

155. By and through the 2015-2017 CBA **Arts. 2.3, 2.4, 2.5, 2.7, 2.8 and 15.13(A)**, and the Memorandum of Understanding Arts. 2.3 and 15.13(A), the State has illegally utilized, and will continue to utilize, public resources for SEIU's private gain, in violation of RCW 42.52.160.

156. Accordingly, by and through 2015-2017 CBA **Arts. 2.3, 2.4, 2.5, 2.7, 2.8 and 15.13(A)**, and the Memorandum of Understanding Arts. 2.3 and 15.13(A), the State, through agency-wide pattern, practice, and policy, violates RCW 42.52.160.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

157. **Declaratory Judgment**: Enter a declaratory judgment that **Arts. 2.3, 2.4, 2.8 and 15.13(A)** of the 2015-2017 CBA are unconstitutional under the First Amendment, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and are null and void;

158. **Declaratory Judgment**: Enter a declaratory judgment that **Arts. 2.3 and 15.13(A)** of the Memorandum of Understanding are unconstitutional as applied to Plaintiffs under the First Amendment, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and are null and void;

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159. **Declaratory Judgment**: Enter a declaratory judgment that **Articles 2.3, 2.4, 2.5, 2.7, 2.8** and **15.13(A)** of the 2015-2017 CBA, and Articles 2.3 and 15.13(A) of the Memorandum of Understanding, violate RCW 42.52.160 by requiring the State to use public resources for SEIU's private gain, and that **Articles 2.3, 2.4, 2.5, 2.7, 2.8** and **15.13(A)** of the 2015-2017 CBA and Articles 2.3 and 15.13(A) of the Memorandum of Understanding are null and void;

160. **Declaratory Judgment**: Enter a declaratory judgment that **Article 15.13(A)** of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding is unconstitutional under the Wa. Const. Art. 8, § 5, and that **Article 15.13(A)** of the 2015-2017 CBA and Article 15.13(A) of the Memorandum of Understanding are null and void;

161. **Injunction**: Issue preliminary and permanent injunction prohibiting Defendants from enforcing **Arts. 2.3, 2.4, 2.5, 2.7, 2.8, and 15.13(A)** of the 2015-2017 CBA and Articles 2.3 and 15.13(A) of the Memorandum of Understanding; and any other activity that this Court declares illegal.

162. **Permanent Injunction**: Issue preliminary and permanent injunctive relief prohibiting the State from compensating IPs for their time during mandated meetings with SEIU representatives;

163. **Costs and attorneys' fees**: Award Plaintiffs costs and reasonable attorneys' fees pursuant to the Civil Rights Attorneys' Fee Award Act of 1976, 42 U.S.C. § 1988; and

164. **Other relief**: Grant Plaintiffs such other and additional relief as the Court may deem just and proper.

Dated: September 1, 2016

By: s/Stephanie Olson

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