

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

SERVICE EMPLOYEES INTERNATIONAL)
UNION 775, WASHINGTON PUBLIC)
EMPLOYEES ASSOCIATION/UNITED FOOD)
AND COMMERCIAL WORKERS LOCAL)
365, SERVICE EMPLOYEES)
INTERNATIONAL UNION LOCAL 925,)
SERVICE EMPLOYEES INTERNATIONAL)
UNION DISTRICT 1199NW,)
INLANDBOATMEN'S UNION OF THE)
PACIFIC/ILWU, UNITED FOOD AND)
COMMERCIAL WORKERS LOCAL 21, and)
WASHINGTON STATE NURSES)
ASSOCIATION,)

Plaintiffs,)

v.)

STATE OF WASHINGTON, OFFICE OF)
FINANCIAL MANAGEMENT, and STEVE)
MCLAIN, Director of Labor Relations, in his)
official capacity,)

Defendant.)

No. 07-2-05431-6 SEA

EVERGREEN FREEDOM
FOUNDATION'S MOTION TO
INTERVENE

I. RELIEF REQUESTED

Pursuant to Civil Rule 24, The Evergreen Freedom Foundation ("EFF") respectfully requests that the Court grant its motion to intervene for the purpose of opposing Plaintiffs' requests for an injunction in this matter and addressing EFF's rights pursuant to the Public Records Act, RCW 42.56. *et seq.* and Civil Rule 65. The parties have been contacted and have indicated they do not oppose this motion.

1 **II. STATEMENT OF FACTS**

2 On November 30, 2006, EFF submitted a public records request to the State of
3 Washington, Office of Financial Management (“OFM”) pursuant to the Washington Public
4 Records Act (“PRA”) for public records regarding negotiation of the state’s 2007-09 collective
5 bargaining agreements. The Plaintiffs, six labor unions, have filed this lawsuit seeking an
6 injunction to prevent OFM from releasing these public records to EFF. EFF understands that the
7 Court has scheduled the matter for a hearing on a preliminary injunction on or about March 9,
8 2007.

9 To obtain the information to which it is entitled under the PRA, EFF requests the right to
10 intervene and oppose Plaintiffs’ motions for a preliminary or permanent injunction and to pursue
11 its rights under the PRA and CR 65. Accordingly, EFF intends to file an Opposition to
12 Plaintiffs’ Motion for Preliminary Injunction once its intervenor status is approved.

13 **III. STATEMENT OF ISSUES**

14 Whether EFF has the right to intervene pursuant to CR 24(a)(2) or, alternatively, whether
15 EFF should be permitted to intervene pursuant to CR 24(b).

16 **IV. EVIDENCE RELIED UPON**

17 EFF relies upon the pleadings and papers filed in this matter and upon the authorities
18 cited herein.

19 **V. LEGAL AUTHORITY AND ARGUMENT**

20 Under Civil Rule 24(a), an applicant may intervene by right when (1) a statute confers an
21 unconditional right to intervene; or (2) when the applicant claims an interest relating to the
22 property or transaction which is the subject of the action and disposition of the action may impair
23 or impede the applicant’s ability to protect that interest and the existing parties do not adequately
24 represent the interest. EFF, as the requestor of the public records in this matter, plainly has a
25 direct interest in proceedings that could prevent disclosure of those records to EFF and the
26 public. The disposition of the action could seriously impede EFF’s rights of access to public
27

1 records, and no party can adequately protect EFF's interest. When it is evident, as it is here, that
2 an interested party's position is not adequately represented by the existing parties, intervenor
3 status must be granted. *See CLEAN v. City of Spokane*, 133 Wn.2d 455, 474, 947 P.2d 1169
4 (1997) (upholding trial court's decision to allow developers to intervene because their interests
5 were not adequately protected by the city or the city public development authority).

6 It is clearly established that requestors of documents may intervene in proceedings
7 regarding disclosure of public records. *See, e.g., Spokane Police Guild v. Washington State*
8 *Liquor Control Bd.*, 112 Wn.2d 30, 32, 769 P.2d 283 (1989) (requestor intervened in suit in
9 which plaintiff sought to enjoin release of investigative report); *Tiberino v. Spokane County*, 103
10 Wash. App. 680, 685, 13 P.3d 1104 (2000) (requestors intervened in proceeding in which former
11 county employee sought injunction preventing prosecutor's office from releasing email
12 correspondence). The spirit and intent of such cases confers an unconditional right upon
13 requestors to intervene in proceedings related to the withholding of records.

14 In the alternative, EFF should be permitted to intervene pursuant to Civil Rule 24(b).
15 Rule 24(b) allows an applicant to intervene when (1) a statute confers a conditional right to
16 intervene; or (2) the applicant's claim and the main action have a question of law or fact in
17 common. EFF's Opposition will concern the same records as the underlying lawsuit and EFF's
18 rights under the PRA. As EFF has promptly moved to intervene upon learning of this action, and
19 prior to any required briefing by the defendant on the issues or a reply by Plaintiffs, the
20 intervention will not unduly prejudice the adjudication of the rights of the original parties.

21 VI. CONCLUSION

22 For the foregoing reasons, EFF should be granted the right to intervene as a defendant in
23 these proceedings (1) to protect EFF's interests, (2) to oppose the injunction sought by Plaintiffs,
24 and (3) to move for the right to inspect and copy public records requested by EFF and (4) to
25 address EFF's rights pursuant to the PRA and CR 65.

1 **VII. PROPOSED ORDER**

2 A Proposed Order is filed herewith.

3 DATED this 28th day of February, 2007.

4 Davis Wright Tremaine LLP
5 Attorneys for Evergreen Freedom Foundation

6 By s/ Michele L. Earl-Hubbard
7 Michele L. Earl-Hubbard, WSBA #26454

8 Evergreen Freedom Foundation
9 Attorneys for Evergreen Freedom Foundation

10 By _____
11 Michael J. Reitz, WSBA No. 36159
12 2403 Pacific Ave. SE
13 Olympia, WA 98501
14 (360) 956-3482
15 (360) 352-1874

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 28th day of February, 2007, I caused to be served, a true and
3 correct copy of the attached document, filed in connection with the above-referenced matter and in
4 the manner indicated:
5

6 Stewart Johnston 7 Franklin Plaistowe 8 Labor and Personnel Division 9 Office of the Attorney General 10 P.O. Box 40145 11 Olympia, WA 98504-0145 12 Tel: (360) 664-4186 13 Fax: (360) 664-4170 14 Email: StewartJ@ATG.WA.GOV 15 Email: FranklinP@ATG.WA.GOV 16 17 Via email and U.S. Mail pursuant to agreement	18 Lawrence Schwerin 19 Robert H. Lavitt 20 Carson Glickman-Flora 21 Schwerin Campbell Barnard & Iglitizin LLP 22 18 West Mercer Street, Suite 400 23 Seattle, WA 98119 24 Tel: (206) 285-2828 25 Fax: (206) 378-4132 26 Email: lavitt@workerlaw.com 27 Via email and U.S. Mail pursuant to agreement
---	---

14 Declared under penalty of perjury under the laws of the state of Washington dated at
15 Olympia, Washington this 28th day of February, 2007.

17 Michele L. Earl-Hubbard
18 Michele L. Earl-Hubbard