

No.

THE SUPREME COURT
OF THE STATE OF WASHINGTON

Save Columbia CU Committee, John Bucholtz, Steve Straub
and Robert Tice, Petitioners,

vs.

Columbia Community Credit Union, Karen Martel, Edwin C.
Bell, Dale Magers, William F. Byrd III, Robert M. Byrd,
Dennis McLachlan, Mark L. Ail, Connie Jones, and Bruce
Davidson, Respondents.

PETITION FOR REVIEW

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IDENTITY OF PETITIONING PARTIES

Petitioners are Save Columbia CU Committee, a Washington nonprofit corporation, and Robert Tice (collectively, Save CCU).¹ Both are members of respondent Columbia Community Credit Union, a Washington credit union (Columbia), the governing board of directors of which in early 2004 consisted of the individual respondents.

COURT OF APPEALS DECISION

Save CCU seeks review of Division II's decision cited as Save Columbia CU Committee, et al v. Columbia Community Credit Union, et al, ___ Wn. App. ___, 139 P.3d 386 (Docket No. 32858-5-II, filed July 25, 2006). On August 24, 2006, the Appeals Court filed an "Order Denying Motions to Reconsider." Both are included in the Appendix.

ISSUES PRESENTED FOR REVIEW

Issue 1. Do members of a Washington credit union have standing to bring a claim against its directors for breaching a fiduciary duty?

Issue 2. Do members of a Washington credit union have a right to inspect its book and records, including its bylaws, bylaw amendments, minutes of director meetings, corporate policies and plans, and records that enable the members to communicate with other credit union members concerning its corporate affairs?

¹ John Bucholtz and Steve Straub were plaintiffs in the trial court proceeding, but declined to join in the appeal. They are named in the case title pursuant to RAP 3.4.

STATEMENT OF THE CASE

Columbia is a state-chartered credit union under chapter 31.12 RCW. Respondents Karen Martel, Edwin C. Bell, Dale Magers, William F. Byrd III, Robert M. Byrd, Dennis McLachlan, Mark L. Ail, Connie Jones, and Bruce Davidson were members of Columbia's Board of Directors in early 2004.

The Board in 2003 adopted a plan to convert Columbia into a state-chartered savings bank. Columbia provided a disclosure statement to its nearly 60,000 members that described the proposed conversion, provided reasons for it, and recommended that the members vote to approve it. Clerk's Papers (CP) 179. At a special meeting held in November 2003 to vote on the proposed conversion, 4,821 members voted for the conversion and 4,407 opposed it, a 52 percent approval. CP 7, 10.

In late January 2004, Columbia's deposit insurer, the National Credit Union Administration (NCUA), disapproved of the procedures Columbia had employed to obtain its members' approval of the conversion. The agency advised Columbia that could not convert without properly obtaining its members's approval. CP 196-98. Columbia later abandoned the conversion plan.

Dissatisfied with Columbia's conversion plan, members who organized Save CCU collected 3,593 signatures of Columbia members on a petitioned it to hold a special meeting for its members to vote on the removal of its

directors. Columbia's board deemed the petition unacceptable and refused to act on it. CP 197, 488. Save CCU then applied for a writ of mandamus, which the trial court granted. CP 4-5. In compliance with the order, Columbia mailed ballots to its nearly 60,000 members to vote on whether to retain the current Board of Directors. CP 58, 466.

Columbia's board caused it to spend undisclosed amounts of money on an extensive advertising campaign urging Columbia members to retain the current directors. CP 53-82. Ultimately, the directors all retained office by receiving between 51 and 53 percent of the votes cast.

Save CU filed this action after the trial court granted the writ of mandamus but before the special meeting. CP 1. Save CCU alleged, among other things no longer relevant, that (1) the directors violated their fiduciary duty to Columbia's members by spending Columbia's funds to defend their positions and by refusing to act on the petition without judicial compulsion, and (2) Columbia wrongfully denied Save CCU members access to Columbia records. CP 2-11. The trial court granted Columbia's Civil Rule 12(b)(6) motion on these claims. CP 427-29.

The Court of Appeals upheld the lower court's dismissals of those claims, concluding that (1) "Save CCU lacks standing to bring its fiduciary duty claim" against Columbia's directors, and (2) "Columbia's members do not have the right to inspect the organization's books and records." Judge

Quinn-Brintnall concurred in the majority's first conclusion and dissented in its second conclusion.

ARGUMENT

1. The petition involves issues of substantial public interest that should be determined by the Supreme Court.

The Court of Appeals ruled that members of a credit union do not enjoy the governance rights that are possessed by shareholders under general corporate law. Thus, the petition raises fundamental issues concerning the rights of members of credit unions. The Washington State Department of Financial Institutions (DFI), Division of Credit Unions (DCU), reports on its website that there are about 79 state-chartered credit unions (SCUs) and about 61 federally-chartered credit unions (FCUs) doing business in Washington. The aggregate assets of the SCUs is nearly \$17 million. <http://www.dfi.wa.gov/cu/default.htm>

Washington law and the National Credit Union Act are written to facilitate easy conversion of credit unions between federal and state charters. RCW 31.12.464; 12 U.S.C. § 1771. The “dual chartering system” enables each credit union’s membership to choose the charter (state or federal) that best serves their needs. http://www.nascus.org/pdf/quick_guide/QG-Bert_Ely.PDF The Washington legislature attempts to make state charters appealing by granting state credit unions “parity” with FCUs as to “all powers and authorities” including those in “corporate governance

matters.” RCW 31.12.404.

The federal agency that regulates federal credit unions, NCUA, has long taken the position that a FCU’s members have the governance rights (e.g., access to corporate records) that shareholders of corporations enjoy under the general corporate law, both statutory and common law, of the state where located. NCUA OGC Legal Opinions 06-0127B (Feb. 6, 2006) and 96-0541 (June 14, 1996). Appellant’s First Statement of Additional Authorities, Attachment 1. (Noted at 21, n.9 of Judge Quinn-Brintnall’s concurring in part and dissenting in part opinion.)

The Court of Appeals opinion denying SCU members the governance rights of corporate shareholders greatly impairs that parity with FCUs that the Washington legislature sought to achieve for SCUs. It may well lead to a significant shift of Washington-based credit unions from state to federal charters (or, if credit union executives deceive their members, from federal to state charters). Further, it raised unanswered questions about how a Washington court would adjudicate issues involving the governance rights of members of a FCU located in this state.

Both FCU and SCU leaders and lobbyists have been battling, for over 25 years, with their counterparts in the banking industry over credit unions’ exemptions from federal income tax. In both case law² and statutory law,³

² “A credit union is a democratically controlled, cooperative, nonprofit society organized for the purpose of encouraging thrift and self-reliance among its members by creating a source of credit at a fair and reasonable rate of interest in order to improve the economic

the recognition that credit unions are “democratically controlled” by their members has been important in defending their tax exemption. As the Court of Appeals decision in this case effectively removes the “democratic control” of SCUs from their members, it may contribute to the loss of their federal income tax exemption.

2. Because the governance rights of Washington credit union members have long been profoundly greater than those of members of savings and loan associations, the 1941 *Wicks* case is inapplicable to credit unions.

In reaching its conclusions on the issues for which Save CCU seeks review, the Court of Appeals relied almost entirely upon one case — State ex rel Wicks v. Puget Sound Sav. & Loan, 8 Wn.2d 599, 113 P.2d 70 (1941). That case addressed the specific question of whether members of a Washington savings and loan association (S&L) held the right to inspect its books and records. The Wicks court first observed, at 601-02:

“It is the settled law of this state that stockholders of corporations may at reasonable time inspect the books and records of the corporation in order to inform themselves concerning affairs of the company and the manner in which the officers are conducting the corporate business, provided their examinations are made in the interests of the corporation, the burden being, however, on the corporation to show improper motives on the part of the

and social conditions of its members.” *La Caisse Populaire Ste. Marie v. U.S.*, 563 F.2d 505, 509 (1st Cir. 1977).

³ “The Congress finds the following: ... (4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.” Sec. 2 of Public Law 105-219 of 1998, 105th Congress.

stockholders.”

The Wicks court then gave two reasons why that “settled law” was inapplicable to members of S&Ls. One reason was that the state governor had specifically vetoed a section (§ 46) of the S&L act (Laws of 1933, Ch. 183) (1933 S&L Act) that expressly had granted those inspection rights to S&L members, and the legislature had not passed that section over his veto or subsequently reenacted it. Other reasons given by the Wicks court were that prior cases in Washington and other states had found that S&L members, though sometimes called shareholders, were more like depositors or creditors than investors in corporate stock; and that the broad authority given by the 1933 S&L Act to a state official (the supervisor of S&Ls) charged with overseeing the affairs and business of S&Ls indicated the legislature intended the regulator’s authority as the exclusive method of protecting the “meager savings” of an S&L’s “large membership.” The Wicks court quoted much of § 94 of the 1933 S&L Act which granted to the regulator “all powers necessary or convenient” to enforce the Act.

Indeed, a reading of the 112 sections of the 1933 S&L Act reveals that members of an S&L were unlikely to take any significant governance oversight role in it. While they nominally elected at annual meetings, by voting the amount of their shares, the board of directors (§ 11), their votes could be cast by proxies of indeterminate duration (§ 13). It was customary

for members, when opening an account at an S&L, to sign a printed account card which contains a proxy designating directors. E.g., Keough v. Kittleman, 74 Wn.2d 814, 816, 447 P.2d 77 (1968). And because S&L members' voting power was based on the dollar amount of their shares or deposits (e.g., §§ 33, 60, and 78), members with “meager savings” had little voting power.

Savings and loan associations (sometime previously called building and loan associations) had existed in Washington since before 1890. Laws of 1890, p. 56. Thus, by 1933, and further by 1941, their pattern of corporate governance — with members having very little active participation — was well established and understood, as the Wicks case indicates.

Credit unions were first established in Washington under the Laws of 1933, Ch. 173 (1933 SCU Act). In stark contrast to the governance of S&Ls, the 1933 SCU Act's 34 sections set out a governance scheme that expected very active participation by a credit union's members. Section 1 of the Act specified that nothing in it affected the laws relating to S&Ls. Section 4 limited membership to groups “having a common bond of occupation or association, or to groups within a well defined neighborhood, community or rural district.” Section 12 provided that “[n]o member shall be entitled to vote by proxy or have more than one vote,” and that ten or more members could call a special meeting of the membership. At annual meetings, members would elect a board of directors and also would “fix the maximum

amount to be loaned to any one member.” § 13. The board was to have “the general direction of the affairs of the corporation”(§ 15) and was to appoint a three-member auditing committee (§ 14) that was to report to the members at each annual meeting. § 16. The board was also was to make “recommendations to the members of the credit union relative to the maximum amount to be loaned to any one member, the need of amendments to the by-laws and other matters upon which, in its opinion, the members should act at any regular or special meeting.” § 15. The bylaws could only be amended by a three-fourths vote of the members present at a meeting called for that purpose. § 7. By a two-thirds vote of a credit union’s members, they could liquidate the corporation and divide its net assets among themselves in proportion to their shares held. §30.

In the 1933 SCU Act, the supervision of a state official (the director of efficiency) was considerably less than that specified by the 1933 S&L Act for S&Ls. Under § 26 of the 1933 SCU Act, the auditing committee was to make semiannual reports to that state official, and that official was to examine the credit union at least once a year or else accept a competent accountant’s report in lieu of an examination. And § 31 permitted the state official to remove any credit union officer that the official found to be unfit, but that authority was greatly curtailed ten years later.

The Washington statutes governing SCUs have been amended 34 times

since 1933, but the core provisions ensuring active participation in their governance by their members have remained, most particularly that each member has one vote regardless of the amount of shares or deposits, and no member may vote by proxy. RCW 31.12.386 (2006).

In 1943 legislation, credit union auditing committees were empowered to suspend directors, officers, and committee members until their members, at a meeting within 15 days, act on the suspension. Laws of 1943, Ch. 131, §13. That legislation eliminated the power of the state official (by then, the supervisor of S&Ls) to remove credit union officers, replacing it with a power merely to suspend officers until the suspension is acted on, at a meeting within 15 days, by the credit union's members "whose approval or disapproval shall be final." *Id.* § 23. But that legislation empowered the state official to suspend the operations of a credit union if its capital became impaired or if it was conducting business contrary to law. *Id.* § 20. That legislation lowered the required membership vote for amending the bylaws from three-fourths to two-thirds. *Id.*, § 6.

In 1953, legislation required credit union boards to make a written report to their members at each annual meeting (Laws of 1953, Ch. 48, § 4), provided that the members at their annual meeting would elect their auditing committee members (*Id.* §5), and eliminated the power of a board to remove audit committee members. *Id.*, §4. That legislation slightly changed the state

supervisor's suspension power over credit union officers, providing that the regulator would notify a credit union's board, rather than its members, which then could act to remove the suspended officer "[i]f the board shall find the supervisor's objection to be well founded." *Id.*, § 10. That same section (§ 10) granted, *for the first time*, broadly-worded enforcement power to the supervisor:

"The supervisor shall be charged with the administration and enforcement of this chapter, shall require each credit union to conduct its business in compliance therewith, and shall have power to commence and prosecute action and proceedings to enforce the provisions fo this chapter, to enjoin violations thereof, and to collect sums due the state of Washington from any credit union."

In 1959, legislation replaced the power of a credit union's board to remove committee members with the power to suspend members of the credit or audit committee or the board until the membership, at a meeting within 15 days, acts on the matter. Laws of 1959, Ch. 138, § 3.

In 1967, the number of members needed to call a special meeting of the members was increased from 10 to the lesser of 100 or ten percent of the voting members. Laws of 1967, Ch. 180, § 4. That legislation empowered the state's supervisor to file a civil action to remove an unfit director, officer, or employee if a credit union's board fails to remove such an individual after considering the supervisor's reasons for suspending him or her. *Id.*, § 15.

In 1969, legislation empowered, *for the first time*, a credit union's bylaws to be amended by its board of directors without a membership vote.

Laws of 1969, Ch. 65, § 2.

In 1973, legislation first empowered a credit union's members to vote by mail. Laws of 1973, 1st Ex. Sess., Ch. 8, § 2. That section (§ 2) also changed and set the number of members needed to call a special membership meeting at ten percent of the voting membership. That legislation, *for the first time*, enacted sections expressly empowering the supervisor to revoke a credit union's charter and liquidate it. *Id.*, §§ 15-18.

In 1984, the legislature enacted a completely revised and recodified credit union act. Laws of 1984, Ch. 31. It included a declaration of policy stating that one of the purposes of the supervisor of S&Ls, as the credit union regulatory authority, was to protect "the integrity of credit unions as cooperative institutions." *Id.*, § 3. It required that regular membership meetings "be conducted according to the customary rules of parliamentary procedure" (§ 20), and that after each special membership meeting the chair of the supervisory committee (formerly named the auditing committee) "shall report to the supervisor ... whether the special meeting was conducted in a fair manner in accordance with the bylaws of the credit and with customary rules of parliamentary procedure." § 21. The legislation changed the number of members needed to call a special meeting to the lesser of ten percent of the members or 2,000 members. *Id.*

In 1997, legislation revised a section listing the duties of a credit union's

board to expressly require that the board “Perform such other duties as the members may direct.” Laws of 1997, Ch. 397, § 17 (Adding RCW 31.12.255(1)(i).) That legislation also added a new section (*Id.*, § 19) stating that “Directors and board officers are deemed to stand in a fiduciary relationship to the credit union ...” That legislation also replaced the language, added in 1984, that membership meetings follow “customary rules of parliamentary procedure” with language requiring only that they follow “rules of procedure approved by the board.” *Id.*, §§ 12 and 13.

The foregoing overview of certain legislative changes to the statutes governing SCUs illustrates that their members have always taken a profoundly more active role in their corporate governance than did members of S&Ls at the time of the Wicks case was decided, and the state regulator has taken a much less active oversight role in the governance and affairs of SCUs than did the regulator of S&Ls when Wicks was decided. As a result, it was inappropriate for the Court of Appeals to apply the Wicks case rationale to deny Columbia’s members, including Save CCU, the governance rights of shareholders as recognized under Washington general corporate law.

3. Directors of a Washington credit union owe fiduciary duties to its members.

In its opinion the Court of Appeals asserts a lack of authority for Save CU’s claim that credit union directors owe fiduciary duties to the credit

union's members, noting that RCW 31.12.267 expressly provides only that such directors "stand in a fiduciary relationship to the credit union." And the Court observed that "a credit union is a creature of statute," apparently suggesting that the law applicable to credit unions must arise solely from statute.

RCW 31.12.267 was not added to the WCUA until 1998, but it cannot be suggested that credit union directors somehow were not even fiduciaries during the first 65 years that Washington credit unions existed. Every corporation is a creature of statute, but Washington and other states' case law belies any claim that the fiduciary duties of their directors and officers can arise solely from express language in their enacting legislation.

When the 1933 SCU Act first enabled a credit union to be chartered as "a corporation under this act" (§ 1) with its business and affairs "managed by a board of not less than seven directors" elected by its members at annual meetings (§ 13), the corporate law of this state relative to directors was already very well established by case law, if not by statutory law. In Hansen v. Stirrat & Goetz Investment Co., 144 Wn. 118, 121, 256 P. 1033 (1926), the State Supreme Court noted the fiduciary relationship to the stockholders of those they elect to their corporation's governing board (in older cases sometimes even called a board of trustees) by quoting its earlier opinion in Llewellyn v. Aberdeen Brewing Co., 65 Wn. 319, 118 P. 30 (1911) wherein

it had declared, at 321, the following:

“Trustees of a corporation act in a fiduciary capacity as official representatives of the stockholders. The duty is imposed upon them to exercise their best efforts, judgment, and discretion, on behalf of the stockholders for the advancement of their interests and the protection of their rights. . . . Ordinarily trustees of corporations in this state are elected annually. If they were authorized to appoint officers, agents, and servants to positions of responsibility and trust in the management of corporate affairs, and extend their appointment over a term of years, and thus deprive succeeding trustees of the power of removal, they could by such procedure indefinitely perpetuate any business policy, one even that might be detrimental to the interests of stockholders, who would be unable to obtain relief through the election of different trustees or by other methods.” [Emphasis added.]

And in Tefft v. Schaefer, 148 Wn. 602, 607-08, 269 P. 1048 (1928), the Supreme Court again noted that corporate directors owed fiduciary duties to their stockholders, quoting a passage from its earlier case of Parsons v. Tacoma Smelting & Refining Co., 25 Wn. 492, 497, 65 P. 765 (1901) wherein it rejected an argument that the action at a meeting of certain directors, one of whom had a conflict, was valid:

“This view of the validity of such action seems to omit a consideration of the trust held by the director. Each occupies a fiduciary relation to the corporation and to each stockholder. He must faithfully perform his trust. The ordinary obligation attending trust relations attaches to the trustee of a corporation.” [Emphasis added.]

Cases such as those just cited led the State Supreme Court in State ex rel. Hayes v. Keypoint Oyster Co., 64 Wn.2d 375, 391 P.2d 979 (1964) to observe, at 381:

“Certain basic concepts have long been recognized by courts throughout the land on the status of corporate officers and directors. They occupy a fiduciary relation to a private corporation and the shareholders thereof akin to that of a trustee, and owe undivided loyalty, and a standard of behavior above that of the workaday world.” [Emphasis added.]

In support of that observation, the Supreme Court cited a corporate law treatise and several cases, then it stated:

This concept is confirmed by the enactment of RCW 23.01.360, which provides:

“Officers and directors shall be deemed to stand in a fiduciary relation to the corporation, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.”

While the Supreme Court in Hayes expressly recognized as “basic concepts” that corporate directors have a fiduciary relation to their shareholders, the statute it cited to confirm such concepts made express reference only to directors’ relation to their corporation (in language very close to that of RCW 31.12.267). And in Llewellyn and Parsons, wherein the Supreme Court earlier recognized directors’ fiduciary relation to shareholders, it cited no statutes that expressly so stated, though all corporations are “creatures of statute.”

Presently, no statutory language in the Washington Business Corporation Act (WBCA), Title 23B RCW, expressly states that directors of a Washington business corporations are *fiduciaries* in relation to their corporations or to their shareholders, but no lawyer would responsibly claim

them not to be so. See RCW 23B.08.300. Similarly, no statute in Title 11 RCW expressly declares trustees as *fiduciaries* in relation to trust beneficiaries, or personal representatives to be *fiduciaries* in relation to estate beneficiaries, or guardians to be *fiduciaries* in relation to persons for whom they are guardians, but no lawyer should deny that such appointees are *fiduciaries* in relation to those beneficiaries. Statutes that establish relationships of trust and agency between persons need not use the term *fiduciary* before courts will recognize the relationship as giving rise to fiduciary duties. Washington courts recognize a fiduciary relationship arises whenever one party occupies such a relation to the other party as to justify the latter in expecting that his interests will be cared for. Liebergesell v. Evans, 93 Wn.2d 881, 889-90, 613 P.2d 1170 (1980).

The NCUA is authorized by federal law to remove and bar from further participation in the affairs of a federally insured credit union (as all Washington credit unions must be) any director who has breached a fiduciary duty that adversely affects the credit union and demonstrates the director's unfitness to serve. E.g., Gully v. National Credit Union Admin. Bd., 341 F.3d 155, 163 (2nd Cir. 2003). In exercising that authority, that agency defines "fiduciary duty" as a "duty to act in the best interest of the institution, its shareholders and its depositors." [Emphasis added.] Gully at 165. It plainly is problematic for the Court of Appeals to declare credit union directors as

having no fiduciary duties to their members when the NCUA might remove them for breaching their fiduciary duties to their members.

4. A credit union member has a common law right to inspect its books and records, including its bylaws and other governance documents.

The law is exactly as the Wicks court in 1941 observed, at 601-02:

“It is the settled law of this state that stockholders of corporations may at reasonable time inspect the books and records of the corporation in order to inform themselves concerning affairs of the company and the manner in which the officers are conducting the corporate business, provided their examinations are made in the interests of the corporation, the burden being, however, on the corporation to show improper motives on the part of the stockholders.”

A comprehensive survey of the national corporate common law on the inspection rights of shareholders was presented in *Tucson Gas & Electric Company v. Schantz*, 5 Ariz. App. 511, 428 P.2d 686 (1967). The court wrote, at 513-14:

The common law rule as to a shareholder’s right of inspection is that every shareholder has the right, by reason of his interest therein, to inspect the books and papers of a corporation at reasonable times and places and for proper purposes. 5 Fletcher, *Cyclopedia Corporations* § 2214 (1952). It is thus seen that this right is not an absolute one but rather a qualified one. The basis of a shareholder’s right to inspect the books and records of a corporation is his ownership of the corporate property and assets through his ownership of shares; as an owner, he has the right to inform himself as to the management of the corporate property by directors and officers who are his trustees in direct charge of the property. *Guthrie v. Harkness*, 199 U.S. 148, 26 S.Ct. 4, 50 L.Ed. 130 (1905); *William Coale Development Co. v. Kennedy*, 121 Ohio

St. 582, 170 N.E. 434 (1930); *Wise v. H.M. Byllesby & Co.*, 285 Ill. App. 40, 1 N.E.2d 536 (1936); *State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n*, 200 Minn. 1, 273 N.W. 603 (1937); 5 Fletcher, *Cyclopedia Corporations* § 2213 (1952); *State ex rel. Lowell Wiper Supply Co. v. Helen Shop, Inc.*, 211 Tenn. 107, 362 S.W.2d 787 (1962). As stated in *William Coale Development Co.*, *supra*:

“Can anything be plainer than the fact that the owner of property has a clear right to inspect his own property? When the owner of property selects an agent or agents to care for and manage his property, how can that act be held to clothe the agent with power to manage the owner as well as to manage the property, and to prevent the owner from even looking at his own property except he do so pursuant to the rules and restrictions promulgated by the agent, who was wholly without power or authority to formulate any such rules or regulations? Are we to forget and abandon all the law pertaining to the relation of principal and agent?”

Generally speaking, the right of a stockholder extends to all books, papers, contracts, minutes or other instruments from which he can derive any information that will enable him to protect his interest. 5 Fletcher, *Cyclopedia Corporations* § 2239 (1952); 18 Am.Jur.2d *Corporations* § 199; Annotations: 22 A.L.R. 24, 82; 43 A.L.R. 783, 788; 59 A.L.R. 1373, 1380; 80 A.L.R. 1502, 1514; 174 A.L.R. 262, 286; 18 C.J.S. *Corporations* § 506.

This common law right of inspection is a remedial right which exists independently of statute. *State ex rel. G.M. Gustafson Co. v. Crookston Trust Co.*, 222 Minn. 17, 22 N.W.2d 911 (1946). Statutes providing for a shareholder's right of inspection have been construed as enlarging or extending the common law right rather than as a restriction or abrogation of the right of inspection. 18 Am.Jur.2d *Corporations* § 179; 18 C.J.S. *Corporations* § 502; 5 Fletcher, *Cyclopedia Corporations* § 2215 (1952); *Bishop's Estate v. Antilles Enterprises*, 252 F.2d 498 (3d Cir. 1958); *State ex rel. Grismer v. Merger Mines Corporation*, 3 Wn.2d 417, 101 P.2d 308 (1940); *State ex rel. McClure v. Malleable Iron Range Co.*, 177 Wis. 582, 187 N.W. 646, 22 A.L.R. 5 (1922); *State ex rel. Lowell Wiper Supply Co. v. Helen Shop, Inc.*, *supra*; *Texas Infra-Red Radiant Company v. Erwin*, 397 S.W.2d 491 (Tex.Civ.App. 1965); *Matter of Steinway*, 159 N.Y. 250, 53 N.E. 1103, 45 L.R.A. 461 (1899).

Absent application of the Wicks case, settled corporate common law requires that Columbia make available to Save CCU for inspection its books and records, including its bylaws, bylaw amendments, minutes of director meetings, corporate policies and plans, and records that enable the members to communicate with other credit union members concerning its corporate affairs.

CONCLUSION

For the reasons set forth above, the Supreme Court should accept review of this case and adjudicate the two issues submitted for review.

Respectfully submitted this September 25, 2006.

/s/
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