NO. 99569-9

SUPREME COURT OF THE STATE OF WASHINGTON

FREEDOM FOUNDATION, a Washington nonprofit organization,

Appellant,

v.

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, a State of Washington government agency, and SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION & ACTION FUND, an IRS 527 political committee,

Respondents.

RESPONDENT SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION AND ACTION FUND'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

[TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Through its Petition for Discretionary Review, the Freedom Foundation (Foundation) tries and fails to convert settled issues of standing under the Administrative Procedure Act (APA), RCW 34.05, *et seq.*, into disputed questions of pressing public concern. None of the issues the Foundation raises satisfies a single ground for discretionary review under RAP 13.4(b). They all involve legal questions that appellate courts have resolved unanimously and which touch on procedural limitations that, in practice, affect a narrow class of serial administrative complainants. Therefore, the asserted grounds for discretionary review—conflicting decisions under RAP 13.4(b)(1) and (2) and a question of substantial public interest under RAP 13.4(b)(4)—do not apply. The Court should deny the Foundation's petition for discretionary review.

NATURE OF CASE AND DECISION

The facts of this case are straightforward and not in dispute. SEIU PEAF is a Section 527 political fund connected to the Service Employees International Union (SEIU). CP 2, 32-34. It is registered as an out-of-state political committee with the PDC and submits C-5 reports. CP 35-44, 84. The Foundation is a non-profit organization that purports to champion individual liberty, free enterprise, and limited, accountable government. CP 2, 13. It claims that its "core mission" is to persuade public employees

to "opt-out" of union membership. Pet. for Rev. at 1.

On February 18, 2019, the Foundation submitted an administrative complaint to the PDC alleging that SEIU PEAF had violated the Fair Campaign Practices Act (FCPA), RCW 42.17A., *et. seq.*, in a number of respects. CP 24-30.[1] Pursuant to RCW 42.17A.755, the PDC conducted a preliminary review of the Foundation's allegations. It solicited a position statement from SEIU PEAF, which in response contested several allegations but acknowledged that, through an inadvertent error, it had failed to report four specific expenditures made in out-of-state political campaigns. CP 72-74. On March 12, 2019, SEIU PEAF also amended its C-5 reports to accurately reflect the initially unreported expenditures. CP 73, 84. The PDC permitted the Foundation to respond with supplemental materials. CP 75-81. The record does not reflect that the Foundation was ever joined as a party to the proceedings.

On May 7, 2019, the PDC issued two letters setting forth its findings and ordering a remedy. CP 82-85. Consistent with SEIU PEAF's admission, the PDC found that SEIU PEAF failed to disclose the above-referenced expenditures in five of its C-5 report. CP 83-85. The PDC did

[1] In 2018, the Foundation lodged separate FCPA allegations against SEIU PEAF, which it eventually converted into a citizen action. CP 5. The trial court dismissed the Foundation's complaint and the Foundation then sought and received discretionary review by this Court as part of consolidated Case No. 97109-9. The Court recently upheld the dismissal of that citizen action in *Freedom Foundation v. Teamsters Local 117 Segregated Fund*, 197 Wn.2d 116, 480 P.3d 1119 (2021).

not classify this failure as an "actual violation" because (1) the unreported out-of-state expenditures did not concern Washington races; (2) all Washington expenditures had been reported; (3) the amended reports showed no additional 2018 expenditures; and (4) SEIU PEAF spent only 9.2% of its 2018 expenditures in Washington. CP 85. Accordingly, the PDC declared that it was formally warning SEIU PEAF to comply with its disclosure requirements going forward but was dismissing the Foundation's complaint pursuant to RCW 42.17A.755(1). CP 82, 85.

Dissatisfied with the PDC's conclusions, the Foundation requested that the PDC reconsider it remedy. CP 19. Aside from clarifying that the allegations had been dismissed as "minor violations" under WAC 390-37-060(1)(d), the PDC declined to do so. CP 7, 19. On June 5, 2019, the Foundation filed an APA petition in Thurston County Superior Court, alleging that the PDC had exceeded its authority under the FCPA when it issued SEIU PEAF a formal warning rather than bringing an enforcement action against SEIU PEAF and seeking extensive monetary penalties. CP 1-21. The PDC moved to dismiss the Foundation's petition on standing grounds and on September 27, 2019, the trial court granted the motion. CP 140-42. The Foundation appealed the trial court's decision on October 1, 2019. CP 136-38.

On February 9, 2021, after receiving briefs from all parties,

Division II of the Court of Appeals issued an unpublished opinion upholding the trial court's dismissal of the Foundation's APA petition on standing grounds. *See Freedom Found. v. Wash. State Pub. Disclosure Comm'n*, No. 53889-0-II, 2021 WL 463364, 16 Wn. App. 2d 1037 (2021) (unpublished). On March 11, 2021, the Foundation petitioned this Court for discretionary review of the decision below.[2]

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly hold that the Foundation lacks standing under the APA to petition for judicial review of the PDC's dismissal of its administrative complaint against SEIU PEAF, where it was not a party to the administrative proceedings and it has no interest in the resolution of the case other than its desire to see punitive penalties imposed on SEIU PEAF due to its animus against public sector labor unions and the workers who choose to join them?
2. Did the Court of Appeals correctly hold that the Foundation lacks associational standing under the APA to petition for judicial review of the PDC's dismissal of its administrative complaint against SEIU

[2] On March 5, 2020, while its appeal of the trial court's decision in this matter was pending, the Foundation filed a citizen action in Thurston County Superior Court against SEIU PEAF alleging the same FCPA violations asserted here. *See Freedom Found. v. Service Employees Int'l Union Political Educ. & Action Fund*, No. 20-2-01056-34 (2020) (Murphy, J.). On July 29, 2020, the Hon. Carol Murphy dismissed the citizen action as procedurally barred by RCW 42.17A.775(1)(a) and 755(1). The Foundation's appeal of Judge Murphy's ruling is currently pending before Division II of the Court of Appeals. *See Freedom Found. v. Service Employees Int'l Union Political Educ. & Action Fund*, No. No. 55104-7-II (2020).

PEAF, where it has not identified any organizational members and any members it does have would not have individual standing to petition for judicial review of said dismissal?

ABSENCE OF GROUNDS FOR DISCRETIONARY REVIEW

I. The Court Of Appeals' Holding That The Foundation Lacks Standing Under The APA To Seek Judicial Review Of The PDC's Decision Does Not Implicate Any Asserted Ground For Discretionary Review.

The Foundation urges the Court to accept discretionary review of the Court of Appeals' finding that it lacked APA standing to challenge the PDC's order dismissing its administrative complaint against SEIU PEAF. It claims review is necessary to (1) resolve an alleged conflict between the decision below and existing precedent and (2) correct vaguely identified problems that the decision will allegedly create. Pet. for Rev. at 4-7.

These arguments lack merit because precedential authority supports the Court of Appeals' view of APA standing. The Court of Appeals' decision merely enforces the longstanding requirement that a petitioner suffer an injury-in-fact. The practical upshot of applying it is that a narrow class of partisan actors are denied a workaround to the FCPA's 2018 amendments, which entrusts the PDC with enforcing campaign finance laws—hardly an issue of substantial public interest.

A. The relevant appellate decisions confirm, rather than conflict with, the trial court's APA analysis.

RAP 13.4(b) permits discretionary review "(1) [i]f the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) [i]f the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals." RAP 13.4(b)(1)-(2). In this case, not only is there no conflict among appellate authorities, the courts unanimously agree with the Court of Appeals' application of the APA's standing requirement.

The APA limits the right to "obtain judicial review of agency action" to persons who are "aggrieved or adversely affected by the agency action." RCW 34.05.530. A person is "aggrieved" under the APA "only when" three conditions are present: "(1) [t]he agency action has prejudiced or is likely to prejudice that person; (2) [t]hat person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and (3) [a] judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action." *Id*. The first and third prongs are paired together as an "injury-in-fact" test. *Burlington v. Wash. State Liquor Control Bd.*, 187 Wn. App. 853, 862, 351 P.3d 875 (2015).

An agency action works an injury-in-fact when it results in "an

invasion of a legally protected interest." *Snohomish Cty. Pub. Transp. Benefit Area v. State Pub. Empl't Relations Comm'n*, 173 Wn. App. 504, 513, 294 P.3d 803 (2013). To confer standing, that invasion must be "concrete and particularized." *Allan v. Univ. of Wash.*, 92 Wn. App. 31, 37, 959 P.2d 1184 (1998). The U.S. Supreme Court has clarified that an injury is "particularized" when it "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548, 194 L.Ed.2d 635 (2016).

The Foundation alleges that the PDC's action inflicted three injuries: (1) dismissing its administrative complaint; (2) diminishing its "competitive interest" by not requiring SEIU PEAF to make disclosures as a political committee; and (3) preventing its staff from researching SEIU PEAF's perceived FCPA violations, which it has associational standing to redress. Pet. for Rev. at 4-7. Governing law recognizes none of these as an invasion of a concrete and particularized interest.

1. Precedential authority establishes that the dismissal of an administrative complaint is not an injury-in-fact.

To begin with, the appellate courts have twice now considered whether the PDC's dismissal of an administrative complaint constitutes an injury-in-fact sufficient to trigger APA standing, and both times held that it does not. *See Freedom Found. v. Bethel Sch. Dist.*, 14 Wn. App. 2d 75,

85-90, 469 P.3d 364 (2020), *rev. denied*, 196 Wn.2d 1033, 478 P.3d 83 (2021); *Freedom Found.*, *supra* at *3-5.[3]

In *Bethel*, the Foundation filed an administrative complaint with the PDC, alleging that a school district unlawfully used public facilities to process employee contributions to union-affiliated political committees. *Bethel*, 14 Wn. App. at 79. After the PDC found that no violation occurred and dismissed the Foundation's complaint, the Foundation brought both a citizen action and an APA petition challenging the PDC's order, each of which were dismissed in superior court. *Id*. In a consolidated appeal, Division II upheld both dismissals, finding with respect to the APA petition that the Foundation did not suffer a requisite "injury-in-fact" to confer APA standing. *Id*. at 85-90. That was because a complainant is not a "party" to the PDC proceeding and the complainant's "organizational mission cannot confer standing without a particularized harm or injury." *Id*. at 87-88. *Bethel* made this finding specifically as applied to the Foundation and in its capacity as an administrative complainant.

The Foundation then sought discretionary review of the APA

[3] In addition, this Court recently denied the Freedom Foundation direct review of the dismissal of another one of its APA petitions and transferred the case to Division II of the Court of Appeals. *See* April 7, 2021 Order, *Freedom Found. v. Wash. State Pub. Disclosure Comm'n, et al. ("ATULC")*, No. 99281-9 (2021), attached hereto as Appendix A. The Foundation's petition, filed before the Court denied direct review in *ATULC*, cites its then-pending petition in that case as grounds to support its petition here. *See* Pet. for Rev. at 3-4, 7-9. That this Court found the Foundation's petition in *ATULC* did not meet RAP 4.2(b)'s criteria for direct review further undercuts the Foundation's claim to meet RAP 13.4(b)'s analogous criteria here.

standing issue by this Court, arguing that the Court of Appeals' holding conflicted with decisions by this and other appellate courts, RAP 13.4(b)(1)-(2), and "involve[d] an issue of substantial public interest." RAP 13.4(b)(4); *Bethel* Pet. for Rev. at 13-17.[4] On January 6, 2021, Department II of the Court considered the petition and unanimously agreed to deny it. Jan. 6, 2021, Order, attached hereto as Appendix B. A more on-point authority than *Bethel* could not be conceived.

Bethel merely implemented the principles of standing previously articulated in appellate cases interpreting the APA. These cases all recognize that a person who lodges a complaint with an administrative body has no concrete interest in the complaint's outcome, whereas the subject of the complaint has concrete interests at stake. Without any cognizable interest, the complainant's dissatisfaction with the outcome of the agency proceeding produces no injury-in-fact. *See Newman v. Veterinary Bd. of Governors*, 156 Wn. App. 132, 231 P.3d 840 (2010) (dog owners who lodged complaint against veterinarian suffered no injury-in-fact from veterinarian board's disposal of complaint, as alleged "interest in having the veterinarians held accountable and in seeing justice served" did not affect any concrete interest); *Allan v. Univ. of Wash.*, 140

[4] *Available at* https://www.courts.wa.gov/content/petitions/98989-3%20Petition%20for%20Review.pdf. In *Bethel*, the Foundation also sought review of the Court of Appeals' determination that the PDC's dismissal of its administrative complaint precluded it from filing a citizen action under the FCPA. That issue is not presented here.

Wn.2d 323, 997 P.2d 360 (2000) (wife of professor subject to university investigation who participated in investigation and subsequent process to revise Faculty Code did not suffer injury-in-fact because her "procedural injury" in university's allegedly incorrect revision process was not tied to any substantive interest); *Choi v. Wash. State Dep't of Health*, No. 77112-4-I, 6 Wn. App. 2d 1019 at *2 (Nov. 19, 2018) (unpublished) (complainant seeking review of agency's failure to revoke medical practitioner's license did not suffer injury-in-fact because he was merely a "member of the Public which [the agency] has an obligation to protect").

With respect to the question of the complainant's party status, *Bethel* explained that "[t]he FCPA does not confer standing on a complainant, and a complainant does not have the ability to participate in any proceeding unless requested by the PDC." *Bethel*, 14 Wn. App. 2d at 87 (citing WAC 390-37-030(1)). Likewise, an agency order is not "specifically directed" at the complainant, so the complainant does not meet the definition of a party, as set forth in RCW 34.05.010(12). *Id*.[5] The cases the Foundation cites to support its "party" status, *see* Pet. for Rev. at

[5] Even if the Foundation were a "party" within the meaning of the APA, that fact alone would not demonstrate harm to a concrete and particularized interest. *See Allan*, 140 Wn.2d at 329 (accepting as "true" that petitioner 'participated as a party in the very adjudication and litigation which resulted in these changes," that fact was not probative of whether she would suffer a "present" or "future harm."); *Newman*, 156 Wn. App. at 148 ("[e]ven if [petitioners] were parties," they could not show that the decision adjudicated a "final order" appealable under the APA because such an order must decide "legal rights, duties, privileges, immunities, or other legal interests").

10-11, are inapposite because they involved entities whose participation in the agency proceeding was based on a material stake in the outcome.[6]

These cases show that there is complete agreement among appellate courts that the dismissal of an administrative complaint, and the complainant's displeasure with that result, does not confer APA standing. Thus, existing precedent fully disposes the Foundation's claims.

Here, there is no dispute that the Foundation was not named as a party in the PDC proceedings and it was involved therein only insofar as it filed an administrative complaint and was permitted to submit additional argument and authority in support of its theory of SEIU PEAF's FCPA liability. *Supra* at 2. The PDC's May 7, 2019 letter orders did not direct the Foundation to take any action, issue a penalty against it, or make any finding concerning its rights or obligations. Thus, the orders were neither "specifically directed" at the Foundation, nor was it permitted to "participate as a party" in the PDC's investigation, within the meaning of RCW 34.05.010(12). *See Bethel*, 14 Wn. App. 2d at 87-88. It therefore is not a "party" within the meaning of the APA. The Foundation's theories to

[6] *See Technical Employees Ass'n v. Pub. Empl. Relations Comm'n*, 105 Wn. App. 434, 20 P.3d 472 (2001) (agency action sufficiently directed at union in unit representation proceeding because it was incumbent representative for some employees who were subject of rival union's representational petition and it claimed it could represent others with uncertain status); *Den Beste v. State Pollution Control Hearings Bd.*, 81 Wn. App. 330, 914 P.2d 144 (1996) (Yakima Indian Nation had sufficient interest to "participate as a party" in agency proceeding over groundwater license applications for appropriation of water in Yakima area). The Foundation has no comparable concrete and particularized stake in whether SEIU PEAF must report to the PDC as a political committee.

the contrary are materially indistinguishable from those already rejected in *Bethel*, *Newman*, *Allan*, and *Choi*.[7]

2. Precedential authority establishes that an agency's decision not to take action against a complainant's ideological opponent does not create a competitive harm which could constitute an injury-in-fact.

There is also no support in the case law for the proposition that an agency's failure to take enforcement action against the complainant's target, whose compliance with the law it deems important to its mission, harms the complainant's competitive interest.

As a threshold matter, it is difficult to understand how the Foundation and SEIU PEAF "compete" with one another in any relevant sense. SEIU PEAF is a Section 527 political fund connected to SEIU, CP 2, 32-34, a labor organization that represents workers. The Foundation is, by its own telling, a non-profit organization focused on advancing conservative political positions. *See* CP 2, 13. The Foundation is not a labor union or an affiliate of one, and it does not seek to replace any SEIU local as a collective bargaining agent for any unit of employees. Nor does the Foundation allege that it is itself a political committee which competes

[7] The Foundation obfuscates the issue by focusing on whether the PDC has engaged in an "agency action," which it insists does not "require a directive to the Foundation to do anything" to qualify as such. Pet. for Rev. at 9-10. But for a person to constitute a "party" under subsection (a) of RCW 34.05.010(12), such an agency action must have been "specifically directed" to it, RCW 34.05.010(12)(a), which under the foregoing cases means ruling on some right or obligation in which the person has a concrete interest.

with SEIU PEAF for donations.

The Foundation contends that an injury need not be economic in nature to confer APA standing. Pet. for Rev. at 12. That is true. But "[a]n interest sufficient to support standing to sue…must be more than simply the abstract interest of the general public in having others comply with the law." *Chelan Cty. v. Nykreim*, 146 Wn.2d 904, 935, 52 P.3d 1 (2002). The Foundation alleges only such an "abstract interest" when it asserts that the PDC's decision results in SEIU PEAF's non-disclosure of political contributions, which thwarts the Foundation's ability to communicate with SEIU members about their own chosen union. Pet. for Rev. at 5, 13. The same is true of the Foundation's claim to be particularly interested in "unions' compliance with FCPA law on a daily basis, as an integral part of [its] mission." Pet for. Rev. at 15, n.8.

The Foundation is clearly opposed for ideological reasons to public employees' joining together in unions and to those employees making political expenditures through their unions. But as the U.S. Supreme Court recognized in *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486, 102 S. Ct. 752 (1982), an organization's ideological disagreement with others' activity is not enough to confer standing. The organization must identify a discrete "personal injury" it has suffered as a result of the alleged error, "*other*

than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id*. at 486 (emphasis added). *Accord Pub. Interest Research Grp. of N.J., Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 121 (3d Cir. 1997) (petitioner's purported knowledge of and anger about defendant's violation did not confer standing because "others may feel just as strongly" as petitioner's members).

That the PDC's decision incidentally reduces the Foundation's opportunity to further its vendetta against SEIU PEAF does not mean the two entities "compete" in any material sense or that the PDC's order has "harmed" that "competition."

To convert its purely abstract interest into a "competitive harm," the Foundation invokes *Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council ("SBCTC")*, 129 Wn.2d 787, 920 P.2d 581 (1996), *St. Joseph Hosp. & Health Care Ctr. v. Dep't of Health*, 125 Wn.2d 733, 887 P.2d 891 (1995), and *Snohomish County*, *supra* at 7. None of these cases assists the Foundation.

In *SBCTC*, the Court identified a competitive harm based on likely pecuniary losses to an existing apprenticeship program, its union affiliates, and individual apprentices, since "[e]xisting programs have an interest in contesting what they believe to be inadequate standards in order to prevent entry of new, substandard programs into the market which will deplete the

work opportunities of apprentices of existing programs including their own." *Id*. at 796. "They also have an interest in attracting qualified apprentices, and additional programs will mean more competition for those apprentices." *Id*.[8]

Likewise, *St. Joseph* rooted its analysis in the financial competition between a hospital and a rival healthcare provider's certificate of need (CN) application to open a kidney dialysis center in the same market in which the hospital operated. *St. Joseph*, 125 Wn.2d at 735-38. The Court reasoned that because the certification process was based on a legislative judgment that excessive competition drove up healthcare costs, "competing service providers" had a cognizable interest in the certification of rival CN applicants. *Id*. at 740-42.

The primacy of economic competition also featured in *Snohomish County*, where the Court of Appeals held that a public employer lost "negotiating leverage" when PERC ruled in an administrative adjudication that contractual grievance procedures survived a labor agreement's expiration as a matter of law. *Snohomish Cty.*, 173 Wn. App. at 513. The employer's loss of leverage stemmed from the fact that the survival of grievance procedures had previously been a subject of bargaining, and the

[8] Although it recognized that a non-economic procedural right might constitute an injury, the Court insisted that such a right must be tied to a "concrete interest…protectable by a requirement of formal adjudicatory proceedings." *SBCTC*, 129 Wn.2d at 795.

employer would consent to that term only in exchange for concessions. *Id*. By removing that item from the bargaining table, PERC reduced the employer's ability to extract those concessions. *Id*. As before, the basis for finding a competitive disadvantage was a party's loss of financial benefits, not an ideological war between politically opposed organizations.[9]

The Foundation's ideological hostility to SEIU PEAF, its desire to impose draconian financial penalties on it and SEIU members, and its avowed interest in interfering with union work is worlds apart from the "competition" recognized in these cases.

Even if it competed with SEIU PEAF in a meaningful sense, the Foundation does not adequately explain how it has been disadvantaged by the agency action at issue. The Foundation claims that the dismissal of its administrative complaint prevents it "carrying out the daily activities of its organization—informing union-represented public employees about the ways in which their union spends the fees that are deducted from their wages, thereby allowing such employees to decide whether or not they

[9] The Foundation attempts to broaden the holding of *Snohomish County*, arguing that the case stands for the proposition that "non-economic harms [are] sufficient to confer standing." Pet. for Rev. at 13. But as seen, *Snohomish County* held the employer had standing due to the diminution of its position in in the context of collective bargaining negotiations and the give-and-take of concrete economic benefits. *See Snohomish Cty.*, 173 Wn. App. at 513 ("Community Transit can no longer *obtain concessions* in exchange for an agreement to continue the arbitration of grievances past the collective bargaining agreement's expiration.") (emphasis added). Whether the loss of these concessions harmed the employer in a direct or indirect fashion, it still ultimately affected its pocket book. The Foundation cannot explain how the PDC's decision not to bring an enforcement action against SEIU PEAF did the same to it.

wish to continue subsidizing such efforts." Pet. for Rev. at 5, 13. But there is no dispute that SEIU PEAF has since reported the out-of-state expenditures that were the subject of the Foundation's PDC complaint. CP 73, 84. Accordingly, nothing prevents the Foundation from accurately communicating SEIU PEAF's expenditures to SEIU members as part of its union-busting efforts.

The Foundation also claims that the prospect of an adverse PDC order which future respondents to PDC investigations could cite in their defense similarly harms its competitive interest. Pet. for Rev. at 12-13. *Bethel* disposed of this theory, explaining that "[t]he mere fact that an unfavorable result could become precedent to [the] Foundation's potential future litigation is not a harm under RCW 34.05.530." *Bethel*, 14 Wn. App. 2d at 89-90.

3. Precedential authority establishes that an organization cannot obtain associational standing by representing the interests of persons with no individual APA standing.

As a makeweight, the Foundation requests the Court accept discretionary review based on the Court of Appeals' failure to recognize its associational standing. Pet. for Rev. at 13-14. But no decision has permitted an entity to obtain review under the APA where, as here, it has no identifiable members and even its generically-described employees and supporters would not have individual standing to bring APA petitions.

Associational standing has three elements: "(1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members." *IAFF, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002).

The Foundation stumbles at the first step because its supporters would not otherwise have standing to sue in their own right. For the same reasons the Foundation cannot show that it suffered an injury-in-fact merely by acting as an administrative complainant and holding a political grudge against the respondent, any supporter or employee who made the same arguments would err as a matter of law. *See supra* at 7-17.

The Foundation's associational standing theory is also defective because it invokes "supporters and employees," but not any members. Pet. for Rev. at 13. No decision which has addressed the doctrine of associational standing has found it to exist based on the amorphous concept of "supporters" or based on the alleged interests of its paid employees. *See, e.g.*, *Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 90 (D.C. Cir. 1987) (no associational standing where organization's "relationship to its 'supporters' bears none of the indicia of a traditional membership organization" insofar as it "serves no discrete, stable group of persons with

a definable set of common interests" and it did not appear that "'supporters' play any role in selecting [organization's] leadership, guiding [its] activities, or financing those activities"); *Fund Democracy, LLC v. S.E.C.*, 278 F.3d 21, 25-27 (D.D.C. 2002) (organization lacked association standing when it claimed to represent "informal consortium" of investors but lacked actual members).

B. This Case Does Not Involve an Issue of Substantial Public Interest.

RAP 13.4(b)(4) allows the Court to accept direct review when a case "involves an issue of substantial public interest that should be determined by the Supreme Court." The Foundation states conclusorily that these issues are at play here but offers no reasons why its own statutory standing affects the public at large. Indeed, the section of the petition nominally devoted to this ground instead simply sets forth the Foundation's reading of the APA on the merits. Pet. for Rev. at 9-11.[10]

[10] The Foundation alludes to this Court's decision in *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 411, 341 P.3d 953 (2015), and claims that the decision below violates *Utter*'s supposed grant of authority for citizens to "subject the PDC's decisions to scrutiny." Pet. for Rev. at 5-6, 16. To begin with, *Utter* spoke only of the ability to bring citizen actions under Section 775 of the FCPA, not an APA petition, which has distinct prerequisites. More importantly, as *Bethel* observed in responding to the same argument, *Utter* analyzed an older version of the FCPA's citizen action provision, pursuant to which "a person could file a citizen's action after giving notice to the attorney general if the attorney general failed to commence an action regarding the alleged FCPA within 45 days." *Bethel*, 14 Wn. App. 2d at 84. The legislature revised the citizen action provision in 2018 after *Utter* was decided, such that all citizen complaints must be mediated through the PDC and citizen actions may be brought only when the PDC fails to take action within 90 days of the complaint. *Id*. at 85. As a result, *Utter* "is not helpful in construing the new language." *Id*.

In reality, the question of the Foundation's right to obtain judicial review of a PDC order is not substantial because it involves a straightforward prudential issue of standing, not the adjudication of a party's substantive rights. Moreover, the issue does not affect the public at large because, in practice, only the Foundation has expressed dissatisfaction with the PDC's resolution of administrative complaints following the FCPA's 2018 amendments, which were consciously designed to shift FCPA enforcement responsibility from private citizens to the PDC. The Foundation's various APA suits in the wake of the 2018 amendments reflect an attempted end-run around the legislature's will, which the Court should not indulge by granting review.

CONCLUSION

For the foregoing reasons, SEIU PEAF respectfully requests that the Foundation's Petition for Discretionary Review be denied.

Respectfully submitted this 12th day of May, 2021.

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DECLARATION OF SERVICE

I, Jennifer Woodward, declare under penalty of perjury in accordance with the laws of the State of Washington that on the date noted below I filed the foregoing document with the Washington State Supreme court using the appellate efiling system, which will provide notice of such filing to all required parties.

Executed this 12th day of May, 2021, at Shoreline, Washington.

Jennifer Woodward, Paralegal

Appendix A

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION, Appellant, v. WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, et al., Respondents.	)	No. 99281-9 **O R D E R** Thurston County Superior Court No. 20-2-01470-0

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud and Montoya-Lewis, considered at its April 6, 2021, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this case is transferred to Division II of the Court of Appeals.

DATED at Olympia, Washington, this 7th day of April, 2021.

For the Court

González C.J.

CHIEF JUSTICE

Appendix B

THE SUPREME COURT OF WASHINGTON

FREEDOM FOUNDATION, Petitioner, v. BETHEL SCHOOL DISTRICT, et al., Respondents.	)	No. 98989-3 **O R D E R** Court of Appeals No. 53415-1-II (consolidated with No. 53430-4-II)

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, González, Yu, and Whitener (Justice Johnson sat for Justice Madsen), considered at its January 5, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 6th day of January, 2021.

For the Court

Stephens, C. J.
CHIEF JUSTICE

BARNARD IGLITZIN & LAVITT

May 12, 2021 - 2:35 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99569-9
Appellate Court Case Title:	Freedom Foundation v. Public Disclosure Commission, et al.
Superior Court Case Number:	19-2-02843-0

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