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NO. 99569-9

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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FREEDOM FOUNDATION,

Petitioner

v.

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, and  
SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL  
EDUCATION and ACTION FUND,

Respondents.

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**ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

The Freedom Foundation seeks review despite the Court of Appeals having again rejected its standing argument on well-settled legal principles, and issuing a decision that does not conflict with precedent or present an issue of substantial public interest. The Washington State Public Disclosure Commission (Commission) dismissed a complaint filed by Appellant Freedom Foundation against Service Employees International Union Political Education and Action Fund (SEIU PEAFF). Simultaneously, the Commission issued a warning letter to SEIU PEAFF in response to minor reporting errors that did not impact any campaign finance information available to Washingtonians. Freedom Foundation's complaint was properly addressed, pursuant to the discretion granted to the Commission by the Legislature under the Fair Campaign Practices Act (FCPA), RCW 42.17A. Dissatisfied with this outcome, Freedom Foundation sought judicial review under the Administrative Procedure Act (APA) against the Commission, seeking to have the court impose damages against SEIU PEAFF in the same action. Freedom Foundation lacks standing to seek judicial review under the APA, as it has failed to meet its burden of showing any particularized injury. Because Freedom Foundation's Petition for Discretionary Review does not satisfy the criteria in RAP 13.4(b), review should be denied.

## **II. COUNTERSTATEMENT OF THE ISSUE**

Should the Court affirm the dismissal of this matter because Freedom Foundation lacks standing under the APA, having suffered no injury in fact?

## **III. COUNTERSTATEMENT OF THE CASE**

### **A. Factual Statement**

SEIU PEAFF is a federally registered political committee that has been filing C-5<sup>1</sup> reports with the Commission as an out-of-state political committee since August 2004. CP 83.<sup>2</sup> In 2018, SEIU PEAFF filed five C-5 reports disclosing its contributions received and expenditures made during the 2018 calendar year. *Id.* The C-5 reports timely disclosed that SEIU PEAFF made \$747,983 in total expenditures in Washington state for 2018. *Id.* These contributions were made by SEIU PEAFF to registered Washington state political committees. *Id.*

On February 18, 2019, the Commission received a complaint, with supporting documentation, from Freedom Foundation. CP 22-71. The complaint alleged SEIU PEAFF violated the FCPA, including RCW 42.17A.250, by failing to report contributions received from persons residing outside Washington state. *Id.* SEIU PEAFF responded to the complaint, CP 72-74, and Freedom Foundation subsequently provided the

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<sup>1</sup> A “C-5” is the PDC report required to be filed by an out-of-state political committee to report certain expenditures and contributions, pursuant to RCW 42.17A.250 and WAC 390-16-050.

<sup>2</sup> “CP” refers to the Thurston County Superior Court’s Clerk’s Papers.

Commission with supplemental information regarding its complaint. CP 75-81.

The Commission reviewed the documents submitted and assessed the factual and legal arguments provided. On May 7, 2019, the Commission dismissed the complaint and issued a formal warning to SEIU PEAFF. CP 82-85. The Commission determined that SEIU PEAFF failed to timely report contributions received from SEIU in Washington, D.C., for the 2018 elections, and that this information was not disclosed until March 12, 2019, when SEIU PEAFF filed amended C-5 reports. *Id.*<sup>3</sup>

In making its timely decision to issue a warning and dismiss the matter, the Commission considered several mitigating factors. The Commission found that SEIU PEAFF: (1) disclosed no additional expenditures as having been made in 2018 on the amended C-5 reports; (2) timely disclosed the \$747,983 in expenditures made as contributions to registered political committees in Washington state on the initial C-5 reports filed; (3) did not spend any of the late reported contributions received from SEIU in Washington state; and (4) received a total of \$8,128,222 in aggregate contributions from SEIU in Washington, D.C., so the \$747,983 spent in Washington state in 2018 by SEIU PEAFF represented only 9.2% of its total expenditure activities. CP 82-85. Through the warning letter, the Commission conveyed the “expectation that SEIU PEAFF will fully comply

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<sup>3</sup> The warning letter stated that SEIU PEAFF failed to timely report contributions it received totaling \$1,534,947. In fact, it appears SEIU failed to timely report \$2,770,463.30 in contributions received, all of which came from SEIU and not Washingtonians.



with the C-5 reporting requirements in the future . . .”. *Id.* This warning letter is available to the public, and is posted on the Commission’s website.<sup>4</sup>

## **B. Procedural History**

Following the Commission’s dismissal of the complaint, Freedom Foundation filed a petition for judicial review in Thurston County Superior Court. CP 1-21. Freedom Foundation named both the Commission and SEIU PEAFF as parties to its lawsuit. Freedom Foundation sought a declaratory judgment that the dismissal of the complaint was incorrect and that it be set aside. *Id.* Freedom Foundation also sought damages, including \$10,000 for “each of the SEIU PEAFF’s violations of RCW 42.17A.250, in an amount to be determined at trial.” *Id.* Freedom Foundation’s action was dismissed based on the Commission’s motion for failure to state a claim. CP 140-142.

## **IV. FREEDOM FOUNDATION FAILS TO ESTABLISH A BASIS FOR REVIEW**

Because Freedom Foundation has failed to satisfy the criteria set forth in RAP 13.4(b), there is no basis for reviewing the Court of Appeals decision. The decision in this case does not conflict with established Court of Appeals or Supreme Court precedent, and does not raise an issue of substantial public interest. Accordingly, the Court should deny review.

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<sup>4</sup> The warning letter is available at: <https://pdc-case-tracking.s3.us-gov-west-1.amazonaws.com/2109/SEIU%20PEAF%20Complaint%20Return%20with%20Warning%20%28Nelson%20complaint%29%20PDC%20Case%2047303.pdf>. (Last visited on May 11, 2021.)

**A. This Court Has Twice Declined Review of the Primary Issue Raised in This Appeal**

The present matter represents Freedom Foundation’s third attempt in the past two years to seek judicial review of a Commission action. Both prior actions were dismissed for lack of standing, and the dismissals were affirmed on appeal. This attempt fails for the same reason.

In the first matter, Freedom Foundation sought review of the Commission’s dismissal of a complaint filed in 2018 against the Bethel School District, alleging the district violated the FCPA by processing payroll deductions to political committees. *Freedom Foundation v. Bethel School District*, 14 Wn. App. 2d 75, 469 P.3d 364 (2020). The Court of Appeals (Division II) held that Freedom Foundation lacked standing to challenge the dismissal, where it was not a party to the underlying administrative complaint and “did not suffer specific and perceptible harm.” *Freedom Foundation*, 14 Wn. App. 2d at 85. This Court denied review of the Court of Appeals decision. Order, No. 98989-3 (Wash. Jan. 6, 2021).

A second petition for review filed by Freedom Foundation was also dismissed by the superior court on the basis that Freedom Foundation lacked standing. *Freedom Foundation v. Washington State Public Disclosure Commission and Amalgamated Transit Union Legislative Council of Washington State (ATULC)*, No. 20-2-01470-34 (November 3, 2020). Freedom Foundation sought direct review of that decision in this Court. This Court denied review of the superior court decision, and the matter is now pending in the Court of Appeals. Order No. 99281-9 (Wash. April 7, 2021).

In order to obtain review by this Court, Freedom Foundation must satisfy the criteria under RAP 13.4(b). The Court of Appeals decision in this matter is consistent with the holding in *Bethel School District*. This Court declined review of the primary issue present in this case—standing—in both the *Bethel School District* and *ATULC* appeals, and no new arguments in favor of review are advanced here. For the reasons set forth below, this Court therefore should decline review of this case as well.

**B. The Decision That Freedom Foundation Lacks Standing to Seek Judicial Review Is Consistent With Precedent**

Freedom Foundation lacks standing to obtain judicial review of the Commission’s action under the APA. RCW 34.05.530. To have standing, a person must be “aggrieved or adversely affected by the agency action.” RCW 34.05.530. A person is aggrieved or adversely affected within the meaning of this section only when three conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That 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.

RCW 34.05.530. All three of these tests must be met to establish standing. *Id.*; *Allan v. Univ. of Wash.*, 140 Wn.2d 323, 326, 997 P.2d 360 (2000). The first and third prongs are generally called “injury-in-fact” requirements, while the second is called the “zone of interest” prong. *Id.* at 327. The

person challenging the action has the burden to prove standing. *KS Tacoma Holdings LLC v. Shoreline Hearings Bd.*, 166 Wn. App. 117, 127, 272 P.3d 876 (2012) (citing *Lujan v. Defenders of Wildfire*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). As discussed below, the Court of Appeals held that Freedom Foundation failed to meet its burden of establishing standing. This decision was consistent with prior decisions by Washington courts interpreting the APA's standing requirement.

**1. Freedom Foundation was not prejudiced by the Commission's action**

Freedom Foundation has shown no prejudice that distinguishes it from the public at large. In order to satisfy the prejudice requirement of RCW 34.05.530(1), a person must make a factual showing of specific and perceptible harm. *See Allan*, 140 Wn.2d at 329; *Patterson v. Segale*, 171 Wn. App. 251, 259, 289 P.3d 657 (2012). When a person alleges a threatened injury, as opposed to an existing injury, the person must demonstrate the threatened harm is "immediate, concrete, and specific" rather than "conjectural or hypothetical." *See Knight v. City of Yelm*, 173 Wn.2d 325, 341, 267 P.3d 973 (2011) (discussing the standing requirements under the Land Use Petition Act); *Patterson*, 171 Wn. App. at 259; *KS Tacoma Holdings*, 166 Wn. App. at 128. For an injury-in-fact, Freedom Foundation must show an invasion of a legally protected interest. *Snohomish Cnty. Pub. Transp. Benefit Area v. Public Emp't Relations Comm'n*, 173 Wn. App. 504, 513, 294 P.3d 803 (2013) (quoting *Lujan v. Defenders of Wildfire*, 504 U.S. at 560).

Freedom Foundation attempts to demonstrate it was injured by asserting it was a “party” to a “proceeding” below by virtue of having filed a complaint, and that such status is itself sufficient to confer standing. It is wrong. RCW 34.05.010(12) defines “party” to include:

- (a) A person to whom the agency action is specifically directed; or
- (b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

No “agency action”<sup>5</sup> was directed at Freedom Foundation, it was not named by the Commission as a party to any proceeding, and it was not authorized under the Commission’s own rules to intervene or participate as a party.

Freedom Foundation argues that the Commission’s complaint dismissal was an “order” “directed” at Freedom Foundation. Petition at 10. This argument, however, is belied by the administrative record. No order was issued in this matter. A dismissal letter and warning was directed to SEIU PEAFF, with Freedom Foundation being provided only a courtesy copy, and the same courtesy being extended to the general public via the Commission’s website.<sup>6</sup> Even if a complaint dismissal letter could somehow credibly be construed as an “order,” the dismissal here was directed at SEIU PEAFF, and did not determine the legal rights, duties, privileges, immunities, or other legal interests of Freedom Foundation. *See* RCW 34.05.010(11)(a).

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<sup>5</sup> RCW 34.05.010(5) defines “agency action” to mean “licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.”

<sup>6</sup> *See* <https://www.pdc.wa.gov/browse/cases/47303> (last visited on May 11, 2021).

In addition, neither the FCPA nor the Commission's rules confer special status upon a complainant based upon the mere act of filing a complaint. In fact, a complainant has no ability to participate in any proceeding, unless requested by the Commission. WAC 390-37-030(1); *Bethel School District*, 14 Wn. App. 2d at 87. When a person files a complaint, the Commission gives notice to the complainant of any open Commission hearings on the matter, and the complainant "may" be called as a witness in any enforcement hearing or investigative proceeding. *Bethel School District*, 14 Wn. App. 2d at 87. Neither the complainant nor any other person, however, "shall have special **standing** to participate or intervene in any investigation or consideration of the complaint by the commission or its staff." *Id.* (Emphasis added.)

Disregarding the Commission's rules, Freedom Foundation argues it was allowed by the Commission to "participate" as a party below. Petition at 11. This argument also lacks merit. The record below reflects that no "proceeding" was held here. Even assuming, *arguendo*, that a complaint review and dismissal could be characterized as a proceeding, the fact that the Commission evaluated information submitted by Freedom Foundation in analyzing the complaint did not transform Freedom Foundation into a "party" that "participated" in such a proceeding. More is required to make an entity in Freedom Foundation's position a party, including actually having been treated by the agency as a party, and having a direct, concrete interest in the proceeding. See *Technical Emps. Ass'n v. Pub. Empl. Relations Comm'n*, 105 Wn. App. 434, 440, 20 P.3d 472 (2001). ("It would

have been absurd for PERC to ignore a party whose union members would be directly affected by the PERC's decision.”).

Freedom Foundation cites *Den Beste v. State, Pollution Cont. Hrgs. Bd.*, 81 Wn. App. 330, 339-40, 914 P.2d 144 (1996), in support of its argument that it was treated as a party. Petition at 11. But as the Court of Appeals noted in *Den Beste*, a person receiving notice of an agency decision is, “not an interested party aggrieved by that decision” and “is not conferred standing to challenge the decision” by virtue of having received such notice. *Den Beste*, 81 Wn. App. at 339. Freedom Foundation was not a party to any proceeding, did not identify any of its supporters personally impacted by the Commission's investigation and complaint dismissal, and fails to demonstrate any other specific injury to it. Consequently, Freedom Foundation has not adequately separated its own interests in desiring enforcement of the FCPA from the interests of the public at large. *See Vovos v. Grant*, 87 Wn.2d 697, 699-700, 555 P.2d 1343 (1976) (no standing based on “the abstract interest of the general public in having others comply with the law.”).

In sum, Freedom Foundation's status as a complainant did not grant it standing to seek judicial review.

## **2. Freedom Foundation was not competitively harmed by the Commission's action**

Freedom Foundation also contends that it was competitively harmed by the Commission's decision, and such harm is a sufficient injury-in-fact to establish standing. Petition at 12-15. There was, however, no competitive

advantage gained or withheld by virtue of the Commission's decision to dismiss the complaint. "The mere fact that an unfavorable result could become precedent to Freedom Foundation's potential future litigation is not a harm under RCW 34.05.530." *Bethel School District*, 14 Wn. App. 2d at 89-90. Freedom Foundation fails to show how the complaint's dismissal disadvantages its viability as an ongoing organization.

Freedom Foundation first argues the Court of Appeals decision conflicts with *Snohomish Cnty.*, 173 Wn. App. at 504. Petition at 13. In *Snohomish County*, Community Transit, a public transportation agency, sought judicial review of a decision by the Public Employment Relations Commission (PERC). Community Transit had standing because the decision by PERC affected it as an employer, as it lost the benefit of a rule that affected its negotiating leverage with unions. *Snohomish Cnty.*, 173 Wn. App. at 513-14. Thus, Community Transit was able to demonstrate that it was directly affected by a PERC decision in the form of an "economic injury." *Id.* In contrast, Freedom Foundation has failed to present any evidence that shows direct economic harm stemming from the Commission's decision.

Freedom Foundation also argues the Court of Appeals decision conflicts with *St. Joseph Hospital & Health Care Center v. Dept. of Health*, 125 Wn.2d 733, 739-42, 887 P.2d 891 (1995). Petition at 15. *St. Joseph* challenged the granting of a certificate of need to a competing health care provider. This Court found *St. Joseph* had standing, reasoning that because the Legislature intended to regulate competition as well as control health



care costs, competing service providers were within the statutory zone of interest. *Id.* at 741. Freedom Foundation fails to point to any similar competitive interest here.

Likewise, Freedom Foundation argues the Court of Appeals decision below conflicts with this Court's decision in *Seattle Bldg. Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 793-94, 920 P.2d 581 (1996). Petition at 16. In that case, the Apprenticeship Council approved the Construction Industry Training Council (CITC)'s apprenticeship program application. The Appellants provided training in the same areas as CITC, and argued adjudicative proceedings should have been held by the Apprenticeship Council during the consideration of the application. This Court found the Appellants had standing to seek judicial review because, "[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 . . .". *Seattle Bldg.*, 129 Wn.2d at 796.

Freedom Foundation does not stand in an economically competitive position with respect to SEIU PEAFF, as the Appellants and CITC did in *Seattle Bldg.* The Appellants in *Seattle Bldg.* demonstrated a direct harm based on how the Apprenticeship Council decision could affect their own competing training program. Here, Freedom Foundation has shown no similar direct harm. The Court of Appeals decision here does not conflict with *Seattle Bldg.*

Finally, Freedom Foundation argues it has "associational standing" based on suffering an injury germane to its "purpose" as an organization,

citing *International Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn. 2d 207, 45 P.3d 186 (2002). Petition at 13. “But Freedom Foundation’s organizational mission cannot confer standing without a particularized harm or injury.” *Bethel School District*, 14 Wn. App. 2d at 88 (citing *Sierra Club v. Morton*, 405 U.S. 727, 739, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972) (plurality opinion)). Freedom Foundation’s reliance on *International Ass'n of Firefighters* to support its organizational standing argument is misplaced. In that case, the association’s members had standing because the suit dealt with money contributions made by its members who themselves alleged monetary injuries. *International Ass'n of Firefighters*, 146 Wn.2d at 214. “[T]he ‘injury in fact’ test requires *more* than an injury to a cognizable interest. It requires that the party seeking review be ... among the injured.” *Allan*, 140 Wn.2d at 328 (quoting *Sierra Club*, 405 U.S. at 734-35). Freedom Foundation has not alleged such comparable direct injuries in the present matter, economic or otherwise, to specific supporters of its organization. Freedom Foundation’s organizational standing argument fails, as it did in *Bethel School District*.

The Court of Appeals decision in this case presents no conflict with prior decisions by the Court of Appeals or this Court. *See* RAP 13.4(b)(1) and (2). Rather, the decision is consistent with the plain language of the statute, as interpreted by Washington courts in the cases discussed above. Freedom Foundation’s attempt to circumvent the APA’s well established

standing requirement was properly rejected by the Court of Appeals, and warrants no further review.<sup>7</sup>

**C. The Court of Appeals Decision Does Not Warrant Review as a Matter of Substantial Public Interest**

Freedom Foundation also asserts this Court should accept review to “prevent the PDC from staking out a position here that would allow it to entirely insulate from judicial review its further decisions of this sort.” Petition at 11. The Court of Appeals decision does not insulate the Commission in this fashion, nor does the Commission assert such insulation. No question of substantial public interest is present.

The Commission has the authority to investigate apparent violations of the FCPA upon receipt of a complaint. RCW 42.17A.105; RCW 42.17A.755(1). If a complaint is filed with the Commission, the Commission has the following options:

- (a) Dismiss the complaint or otherwise resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review;
- (b) Initiate an investigation to determine whether an actual violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with chapter 34.05 RCW and subsection (3) of this section; or
- (c) Refer the matter to the attorney general, in accordance with subsection (4) of this section.

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<sup>7</sup> The Court of Appeals decision below did not address the “zone of interest” requirement, having disposed of the case pursuant to the “injury-in-fact” requirement. Freedom Foundation also failed to demonstrate standing under the zone of interest requirement, as the Commission is tasked with reviewing potential violations of the FCPA regardless of the particular viewpoint of a complainant. *See Newman v. Veterinary Bd. Of Governors*, 156 Wn. App. 132, 143-44, 231 P.3d 840 (2010) (No right to compel action against the veterinarians’ licenses by virtue of having filed a complaint, as that authority and discretion were vested with the Veterinary Board).

RCW 42.17A.755(1). In other words, the Commission must do one of four things: 1) dismiss a complaint; 2) resolve a complaint pursuant to RCW 42.17A.755(2); 3) initiate an investigation on the complaint, which may lead to an enforcement action; or 4) refer the matter to the attorney general. *Id.* The Commission receives hundreds of complaints annually, and addresses those complaints using the options set forth in statute. In that regard, Freedom Foundation's complaint in this matter is indistinguishable from other complaints received by the Commission. Here, the Commission lawfully chose to dismiss the complaint, as authorized by RCW 42.17A.755(1)(a).

Not content with the disposition of the complaint, Freedom Foundation argues that judicial review is warranted because citizens should serve as an independent check on the Commission. But such a check equates to an unfettered right to challenge any complaint disposition in court. In so arguing, Freedom Foundation attempts to sidestep the APA's standing requirement, instead relying exclusively on *Utter v. Building Industry Ass'n*, 182 Wn.2d 398, 341 P.3d 953 (2015). Petition at 16.

Freedom Foundation, however, misapplies *Utter*, which did not analyze the availability of judicial review under the APA. *Utter* applied the citizen action process as it existed prior to the 2018 amendments to the FCPA. *Utter* is not applicable here, as previously recognized by the Court of Appeals in *Bethel School District*, 469 P.3d at 369.

In 2018, the Legislature adopted Engrossed Substitute H.B. 2938, 65th Leg., Reg. Sess. (Wash. 2018) (ESHB 2938), making numerous

amendments to the FCPA, including significant changes to the citizen action process. *See* Laws of 2018, Reg. Sess., ch. 304 (effective June 7, 2018).<sup>8</sup> Prior to those changes, this Court held that the FCPA precluded a citizen suit only where the attorney general or local prosecutor brings a suit. *Utter*, 182 Wn.2d 398 at 405. In enacting ESHB 2938, the Legislature did not eliminate the ability of citizens to file actions in the name of the state. The Legislature did, however, modify the required prerequisites to be met for such an action to be viable. Freedom Foundation did not meet those new prerequisites here.

While the former statute did not preclude a citizen's action where the state *declined* to sue, the current statute does. *Bethel School District*, 469 P.3d at 369 (comparing former RCW 42.17A.765 with RCW 42.17A.775). Citizen actions are now dependent upon the citizen first filing a complaint with the Commission. RCW 42.17A.775(2). Further, the Legislature chose to preclude citizen actions where the Commission has timely considered and taken action on a complaint. RCW 42.17A.775(2)(a).<sup>9</sup> As a result, *Utter's* holding regarding the pursuit of a citizen action under the prior version of the FCPA offers no direct guidance here.

The Commission is cognizant that its actions are subject to judicial review by those who can establish standing. For example, those subject to

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<sup>8</sup> The Legislature also amended RCW 42.17A.755 and RCW 42.17A.775 in 2019 in Substitute H.B. 1195. Laws of 2019, Reg. Sess., ch. 428. Those amendments have no bearing on this matter.

<sup>9</sup> Freedom Foundation's complaint was filed on February 18, 2019, after the changes to the FCPA became effective (June 7, 2018).

enforcement action by the Commission have a right to seek judicial review following the issuance of a final order by the Commission. *See* RCW 34.05.542(2). There is no basis, however, to expand the APA's standing requirements in the manner suggested by Freedom Foundation.

Freedom Foundation does not stand in the same position as those accused of misconduct. Rather, the rights of the accused are distinguished from the rights of the accuser, particularly in the administrative agency context. The United States Supreme Court has recognized “that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” *Heckler v. Chaney*, 470 U.S. 821, 831, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985); *see also Nat’l Elec. Contractor’s Ass’n v. Riveland*, 138 Wn.2d 9, 31, 978 P.2d 481 (1999). In *Heckler*, the Court reasoned that, “. . . when an agency refuses to act it generally does not exercise its *coercive* power over an individual’s liberty or property rights, and thus does not infringe upon areas that courts often are called upon to protect.” *Heckler*, 470 U.S. at 832 (emphasis in original).<sup>10</sup> Here, the Commission exercised no coercive power over Freedom Foundation when it dismissed its complaint as unsubstantiated.

This matter does not involve an issue of substantial public interest. Succinctly put, complainants are not authorized to seek judicial review

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<sup>10</sup> *Heckler* interpreted the federal Administrative Procedure Act, 5 U.S.C. § 701(a)(2), which bars judicial review of agency action “committed to agency discretion by law.” Here, the FCPA grants to the Commission such discretion with regard to the dismissal of complaints. RCW 42.17A.755(1)(a).

based solely on their dissatisfaction with a complaint disposition. A contrary result would subject routine agency dispositions to needless litigation. No authority exists in the law for such an unconstrained broadening of the APA's standing requirement, which appropriately limits judicial review to agency decisions that directly injure an affected party. Freedom Foundation has simply not carried its burden of meeting the APA's standing requirement.

#### V. CONCLUSION

Freedom Foundation's Petition for Review does not satisfy the criteria for accepting review in RAP 13.4(b). The Court of Appeals properly rejected Freedom Foundation's petition for judicial review based on the APA's standing requirement as consistently applied by Washington courts. Because Freedom Foundation has presented no issue that satisfies the standard for this Court's review, the Petition should be denied.

RESPECTFULLY SUBMITTED this 12th day of May, 2021.

ROBERT W. FERGUSON  
Attorney General



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**PROOF OF SERVICE**

I certify that I arranged for service a true and correct copy of this document for delivery on all parties or their counsel of record on the date below as follows:

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

DATED this 12th day of May, 2021, at Olympia, Washington.

  
\_\_\_\_\_  
MARLENA MULKINS  
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**AGO/GCE**

**May 12, 2021 - 12:26 PM**

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