

FILED
Court of Appeals
Division II
State of Washington
4/8/2020 2:59 PM

No. 53889-0-II

IN THE COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

FREEDOM FOUNDATION,

Appellant/Plaintiff,

v.

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

Appellees/Defendants.

**APPELLANT/PLAINTIFF, FREEDOM
FOUNDATION'S, REPLY BRIEF**

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I. ARGUMENT

A. Standard of Review.

In reviewing administrative action, this court sits in the same position as the superior court, “applying the standards of the Administrative Procedures Act [(the “APA”)] directly to the record before the agency.” *Tapper v. Employment Sec. Dept.*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). In order to discharge this duty, the Court must therefore conduct a searching review of the evidentiary record before the administrative agency, to determine whether the agency has erred. *See Franklin Cty. Sheriff’s Off. v. Sellers*, 97 Wn.2d 317, 324, 646 P.2d 113 (1982). “A reviewing court may reverse an administrative decision if: (1) the agency has erroneously interpreted or applied the law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious.” *Conway v. Dept. of Social & Health Svcs.*, 131 Wn. App. 406, 414, 120 P.3d 130 (2006) (emphasis added). Questions of law are reviewed *de novo*.¹

B. The Foundation’s Injury-In-Fact Is Recognized By The APA, Arising From the PDC’s “Proceedings.”

First, the PDC claims there was not even an “agency proceeding.” PDC’s Br., at pp. 9-10 (“In fact, there was no ‘agency proceeding’ below, as no formal action was ever initiated against SEIU PEAFF ... Here, no such hearing or proceeding was initiated.”) (emphasis added). The PDC’s understanding of what constitutes an “agency proceeding” within the meaning of RCW 34.05.010(12)(a) seems erroneously to conflate that

¹ See RCW 34.05.570(3)(d).

concept with that of an “adjudicative proceeding,” which is separately defined in Subsection (1) of the APA’s definitions.² But the definition of “party” in Subsection (12) uses the notably broader phrasing of “agency proceeding,” and therefore must be interpreted to import a different meaning than “adjudicative proceeding.” *See Seeber v. Washington State Public Disclosure Commission*, 96 Wn.2d 135, 139, 634 P.2d 303 (1981).³ SEIU PEAFF, by contrast, concedes in its briefing that “agency action” is present here. *See* SEIU PEAFF’s Br., at p. 18.⁴ SEIU PEAFF also recognizes at various points in its Answer Brief that the PDC did hold an administrative “proceeding,” in contrast to the PDC’s efforts to revise history. *See* SEIU PEAFF’s Br., at pp. 5, 8 (referring to agency “proceedings” at issue here).

The PDC also issued an “order,” which in this instance is the result of the PDC actually engaging in an agency proceeding. Its claim otherwise is absurd. The PDC next takes issue with the Foundation’s status as a “party” to the PDC’s summary review of the Foundation’s statutory complaint, because “[n]o ‘agency action’ was ever directed at Freedom Foundation, and it was never named by the Commission as a party to any ‘agency proceeding.’” PDC’s Br., at p. 9. While SEIU PEAFF’s admissions cast serious doubt on the PDC’s linguistic gymnastics in interpreting a statute with which it has no particular expertise, the Foundation will

² “‘Adjudicative proceeding’ means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency.” RCW 34.05.010(1).

³ “It is an elementary rule that where certain language is used in one instance, and different language in another, there is a difference in legislative intent.”

⁴ “As to subparagraph (a), the Foundation notes that the PDC’s dismissal of its complaint was an ‘agency action’ within the meaning of the APA because it was an ‘order’ which ‘implemented’ the FCPA ... That is undoubtedly true.” (emphasis added).

independently demonstrate below that it can satisfy the APA's definition of party under either prong of RCW 34.05.010(12).

1. *The Order of Dismissal Was an "Agency Action" "Specifically Directed" to the Foundation.*

The PDC unquestionably issued an order. *See* RCW 34.05.010 ("Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons."). It is obvious that the PDC's dismissal here qualifies. That definition does not require a directive to the Foundation for it to do anything; it only requires that someone's legal rights or obligations be determined or impacted. *See supra*. Moreover, given that the PDC's various communications "determined" that SEIU PEAFF was "legal[ly]" due for nothing more than a tepid reprimand, and that the Foundation's "interests" in its complaint were thereby terminated, they are "orders" within the meaning of the APA. *See CP*, at 015-021.

Moreover, the "specifically directed" language of Subsection 12(a) does not require that the agency "exercise[...coercive power" over the Foundation, as the Respondents insist throughout their submissions. *See* PDC's Br., at pp. 12, 17; SEIU PEAFF's Br., at pp. 10, 18.⁵ But neither the PDC nor SEIU PEAFF cites any authority for that proposition, and Washington's APA is not so limited in its definition of "party."

⁵ "Likewise, the PDC's determination did not impose an affirmative burden or obligation on the Foundation to do anything ... In other words, an agency order is 'specifically directed' to a person only if it affects their material legal interests." The order here certainly did affect the Foundation's material legal interests in its complaint, and that alone is sufficient; it need not have also subjected the Foundation to any burden or obligation.

Indeed, both Respondents struggle vainly to avoid the significance of *Automotive United Trades Organization v. Washington State Public Disclosure Commission*, 8 Wn. App. 2d 1068, 2019 WL 2121528 (not reported) (2019) (“*AUTO*”). Both apparently embrace the notion that “*AUTO*’s holding was entirely unrelated to the question of standing.” SEIU PEAFF’s Br., at p. 16; PDC’s Br., at p. 13. That is a curious position, given that the timeliness portion of the opinion begins by observing general principles concerning standing, citing some of the same cases that the Court has seen here, and honing in on the “injury-in-fact” prong to determine when the complainant had suffered such a prejudice.⁶ *See AUTO*, 8 Wn. App. 1068, at *4. But fundamentally, the questions of whether and when the PDC’s dismissal letter in that case caused a “specific and perceptible harm” to the complainant are bound up with the question of standing, and the Court (contrary to SEIU PEAFF’s several misstatements) “addressed and considered” the question of standing, in the context of *AUTO*’s disputing the question of prejudice, and elaborated in great detail on the reasons for its holding. *See AUTO*, 8 Wn. App. 1068, at *4-5. This Court’s analysis there cannot be called *dicta*. *See SEIU PEAFF’s Br.*, at p. 17 (*citing ETCO v. Dept. of Labor & Indust.*, 66 Wn. App. 302, 307, 831 P.2d 1133 (1992)).⁷

⁶ It is also unclear how the PDC believes it is relevant, even if true, that *AUTO* considered a “fundamentally different statutory scheme” (*see PDC’s Br.*, at p. 13), considering that the *AUTO* opinion is predicated upon a standing analysis *under the APA*. The Foundation’s initial brief invited the PDC to elaborate on this position (*see Foundation’s Br.*, at pp. 17-18), but the PDC appears to have declined the invitation.

⁷ Moreover, had the Foundation waited more than thirty (30) days after the PDC’s dismissal to commence its petition for judicial review below, there is no doubt that the PDC would be arguing to this Court (as it did to Judge Murphy below in *AUTO*) that prejudice to the Foundation occurred upon sending the dismissal letter, and it would be citing the *AUTO* decision. Rightly so, because that decision stands for the proposition that such dismissal letters are “agency actions” that are sufficient to work an “injury-in-fact” to the interests of

Furthermore, the Respondents’ own cited cases make clear that the application of “specifically directed” is not so narrow as to require that the Foundation be subject to the “coercive power” of the PDC. SEIU PEAFF quotes selective portions of *Newman v. Veterinary Bd. of Govs.*, 156 Wn. App. 132, 231 P.3d 840 (2010), but fails to apprise the Court of why “if specifically directed at anyone [the decision] was directed at the licensees.” See SEIU PEAFF’s Br., at p. 18. In that case, the Newmans had argued that they were parties under RCW 34.05.010(12)(b) and were therefore entitled to notice of the decision that the court determined was not “specifically directed” at them. *Newman*, 156 Wn. App. at 147. But the very reason that they did not receive the notice – unlike the Foundation here, who was entitled to and who *did* receive notice of the PDC’s dismissal (see CP, at 015-017) – is that they were not “parties” and were therefore not entitled to notice. See *Newman*, 156 Wn. App. at 147.⁸ Considering the agencies’ differing treatments of the Newmans there and the Foundation here, *Newman* actually supports the Foundation’s inescapably obvious position that a letter sent to a person and disposing of its complaint is “specifically directed” to that person.⁹

the complainants whose claims are rejected thereby, and therefore sufficient to confer standing on the Foundation. See *AUTO*, 8 Wn. App. 1068, at *5 (“*AUTO* reasonably should have known that the June 17 letter detailing why it’s citizen’s action was meritless would cause it specific and perceptible harm. This is especially true given that Friends of Bob Ferguson had been copied on the letter.”) (emphasis added).

⁸ “While the Newmans assert that they would have been allowed to intervene, the record does not show that they were in fact allowed to intervene or whether they had even asked to intervene ... Because the Newmans were not parties to the agency proceeding, they were not entitled to notice of the November 10, 2008 letter under *Devore*.” (emphasis added).

⁹ Further, SEIU PEAFF points out that *Newman* held that the decision to not file a statement of charges was not an “order,” because it did not determine the legal rights or interests of the Newmans. See SEIU PEAFF’s Br., at pp. 15-16. Setting aside SEIU PEAFF’s admission that the PDC’s dismissal here was such an “order” (see *supra*, at p. 2, n.4), the distinction

SEIU PEAFF also misapprehends *Allan v. Univ. of Washington*, 140 Wn.2d 323, 997 P.2d 360 (2000). The reason that Mrs. Allan was only left with a “procedural injury” in that case is because her grievance with UW’s rule changes was not the subject of any separate, protected interest (*see Snohomish Cty. Pub. Transp. Ben. Area v. Publ. Emp’t Rel. Comm’n*, 173 Wn. App. 504, 513, 294 P.3d 803 (2013) (defining “injury-in-fact” as the “invasion of a legally protected interest”)), prior to the filing of her petition for judicial review – such as the Foundation’s administrative complaint filed under the FCPA’s express authority. Mrs. Allan simply wrote to UW, pursuant to no authority but her own, that she believed rule changes had to go through APA procedures. *Allan*, 140 Wn.2d at 325-26.

The “procedural injury” referred to there was thus simply the abstract injury arising from the University’s failure to comply with the APA – it only makes sense this would be deemed insufficient to confer an independent “injury-in-fact.” *See id.*, at 329-30. Where a party’s “injury-in-fact” or “procedural injury” results from the agency’s violation of the very statute that agency is bound to interpret and apply, however, **in its disposition of an administrative complaint explicitly provided by that statute**, the situation is entirely different. This axiom was recognized by this Court in *AUTO* and by *Seattle Bldg. & Const. Trades Council v.*

again goes back to the absence of a statutory complaint procedure for the Newmans to rely on. *See Newman*, 156 Wn. App. at 148 (“Simply put, the Newmans do not identify their legal interest in having the Board prepare a statement of charges.”). Had the Newmans been able to cite such authorization for them to file a complaint (or a report) with the Board, the order dismissing that complaint would surely have been determined to affect their legal right to have the complaint properly determined. That is, after all, how due process works. Here, it also must be noted, the PDC’s dismissal affected more than the Foundation’s legal interest in its administrative complaint, it also affected (*i.e.*, precipitated) its “legal right” to file a citizen’s action. *See RCW 42.17A.775.*

Apprenticeship & Training Council, 129 Wn.2d 787, 920 P.2d 581 (1996)¹⁰; it also finds support in the decisions of the United States Supreme Court. *See Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1549 (2016).¹¹

SEIU PEAFF argues that, “*Allan, Newman and Choi* [an unpublished opinion with no particular relevance to the central questions here] are on point.” *See* SEIU PEAFF’s Br., at p. 14. But none of those cases involved an administrative complaint filed pursuant to an explicit, comprehensive statutory protocol, wherein the agency received submissions from the complainant and gave it notice of its decision.¹² Only *AUTO* is on point –

¹⁰ It is SEIU PEAFF that offers the Court misleading and selective quotes to suggest that a “requirement of formal adjudicatory proceedings” is necessary before one can assert a procedural injury sufficient for standing. *See* SEIU PEAFF’s Br., at p. 14, n.4 (*citing Seattle Bldg. & Const. Trades Council*, 129 Wn.2d at 795); *see also* Foundation’s Br., at p. 21. The Supreme Court uttered those words in the course of responding to the Apprenticeship Council’s argument that the disposition would have been no different under “formal adjudicatory proceedings,” and it appears the “formal adjudicatory proceedings” referred to in that passage were the proceedings for judicial review before the Superior Court. *See Seattle Bldg. & Const. Trades Council*, 129 Wn.2d at 795. The Court’s subsequent discussion makes clear that the availability of formal administrative proceedings was not part of its analysis on the “injury-in-fact” question, and that the “injury-in-fact” arose from an interest created by statute (one much less formal than the FCPA’s procedures for citizen’s complaints, notably). *See id.*, at 796. Indeed, *Snohomish County* makes plain that only a “legally protected interest” is necessary. *See* 173 Wn. App. at 513.

¹¹ “Just as the common law permitted suit in such instances, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified.” (emphasis in original) (*citing FEC v. Akins*, 524 U.S. 11, 22 (1998) (“Rather, there is a statute which, as we have previously pointed out ... does seek to protect individuals such as respondents from the kind of harm they say they have suffered, i.e., failing to receive particular information about campaign-related activities.”)).

¹² SEIU PEAFF argues that the Foundation’s distinguishing of *Newman* “...confuses the right to file an administrative complaint (which kicks off the review process) with the right to compel the investigating agency to bring an enforcement action after it conducts a review” (*see* SEIU PEAFF’s Br., at p. 16, n.5), but this argument (along with the PDC’s, *see* PDC’s Br., at p. 17) itself conflates (i) the notion of “special standing” to participate in agency adjudicatory proceedings or “compel” that they even be commenced (*see* WAC 390-37-030(1)) with (ii) that of ‘general’ standing to bring a petition for judicial review to ensure that the PDC has complied with the requirements set forth in the very same statutes pursuant to which any “special standing” regulations were authorized. In other words, the PDC may have the authority to limit who participates in proceedings before it (and the Foundation does not assert the contrary), but the separation of powers means that the PDC does not have the authority to limit standing in a judicial context, when parties seek to review its own actions. The PDC seems to fundamentally misunderstand the constraints placed upon it by law. *See* PDC’s Br., at p. 11; *see also infra*, at p. 22.

and the unpublished nature of this decision does not mean this Court should turn a blind eye to its previous, directly applicable, eminently correct analysis.¹³ The Court should hold that the Foundation had standing as a “party” under RCW 34.05.010(12)(a).

2. *The Foundation Was Permitted to Participate “As a Party” in the Agency “Proceedings.”*

Separately and independently, it is clear that the Foundation participated “as a party” in the “agency proceedings” that resulted from the filing of its PDC complaint, as necessary to satisfy RCW 34.05.010(12)(b).

First, it must again be noted that the PDC erroneously disregards the significant difference between an “agency proceeding” and an “adjudicative proceeding” under the APA. *See* PDC’s Br., at p. 9-10 (“Filing a complaint with the Commission did not create an agency proceeding. The Commission, in its discretion, may conduct an investigation in response to a complaint and then, if warranted, may initiate an adjudicative proceeding.”); *see also supra*, at pp. 1-2. The definition of “party” does not require the latter, however, only the former, and the PDC cites no authority for treating them as one and the same. *See* RCW 34.05.010(12)(b). The

¹³ Based on the absolutely indistinguishable set of facts in that case, it certainly holds more persuasive weight than cases cited by SEIU PEAFF for the proposition that “a generalized interest in seeing the law properly enforced” is not enough. *See* SEIU PEAFF’s Br., at p. 11. The only Washington case on that point considered a question of standing under the Land Use Petition Act (“LUPA”), not the APA, and considered the aberrational question of “...whether a governmental entity, Chelan County, can be prejudiced or injured by the erroneous interpretation and application of law of its own agent, its Director of Planning.” *See Chelan Cty. v. Nykreim*, 146 Wn.2d 904, 935-36, 52 P.3d 1 (2002). The others, from federal jurisprudence, either declined to decide the question of standing, or decided it in the highly particularized context of an FCC decision. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 66 (1997) (“We thus have grave doubts whether AOE and Park have standing under Article III to pursue appellate review. Nevertheless, we need not definitively resolve the issue.”); *KERM, Inc. v. F.C.C.*, 353 F.3d 57, 60 (D.C. Cir. 2004) (“There is no doubt that both listeners and competitors may, in appropriate cases, demonstrate standing to challenge actions of the FCC under the Communications Act.”).

remainder of its argument on this prong seems to be directed to arguing the subtleties of “special standing” to participate in agency proceedings before the PDC,¹⁴ which as noted above, says little concerning standing to seek judicial review. *See Conway*, 131 Wn. App. at 416 (“To the extent DSHS interprets the regulations as defining the right to administrative review, its view is not entitled to deference.”).

For its part, SEIU PEAFF argues that the Court should not ignore the phrase “as a party” that is appended to “participate” in RCW 34.05.010(12)(b). Quite right, and SEIU PEAFF is further correct to note that “...the second part [of the sentence] operates as a catchall to capture entities that participate as if they had been named as parties.” SEIU PEAFF’s Br., at p. 19.¹⁵ Further, the cases SEIU PEAFF cites underscore that nothing more is required for “party” status than an entity being treated as a party would otherwise be treated in more formal “proceedings” – having its submissions accepted, considered by the agency and responded to by the other party, receiving notice of documents and of a decision, and being apprised of the

¹⁴ If this is not what is meant by the PDC’s use of the word “special” before standing, then the meaning of the regulation devolves into gibberish, as the PDC correctly notes that “there is no such thing as ‘special standing’” (*see* PDC’s Br., at p. 11), at least not in the context of judicial standing (and even if there were, it would not be up to the PDC to define the scope of that standing). In any event, the Court is required to interpret the regulation in a way that gives effect to all of the words used, just as it must do with statutes (*see* SEIU PEAFF’s Br., at p. 19), and so it cannot simply ignore the word “special” or treat it as meaningless utterance. *See Conway*, 131 Wn. App. at 416. Of course, it should also not read the word in a way that renders WAC 390-37-030 absurd, as permitting that administrative regulation to define the scope of judicial standing would. *See Bayley Const. v. Dept. of Labor & Indust.*, 10 Wn. App. 2d 768, 790, 450 P.3d 647 (2019).

¹⁵ This does not seem to contradict the Foundation’s position that informal “proceedings” and treatment of the parties are sufficient, such as that “...the PDC was happy to treat the Foundation as a party when conducting its preliminary review of the complaint and deciding to take no enforcement action thereon.” *See* Foundation’s Br., at p. 15.

basis of that decision – *i.e.*, receiving the basic indicia of due process.¹⁶ It appears that the looseness of these requirements was specifically to allow for the informal “proceedings” that transpired here, and to make sure that participants in such proceedings receive due process. *See Den Beste v. State, Pollution Control Hrgs. Bd.*, 81 Wn. App. 330, 339-40, 914 P.2d 144 (1996).¹⁷ In its wisdom, the Legislature intended to prevent the exact situation before the Court, where an agency complies with all the requirements due another party, in order to avoid a procedural defect, but then turns around and argues for purposes of denying judicial review that the party was not a “party” at all, and it was just attempting to “...keep complainants informed as to the procedural status of [their] complaints.” *See* PDC’s Br., at p. 10. The Court should act on the Legislature’s clear intent to cast “party” status broadly, and prevent the PDC from staking out such a neat position here, which of course, would allow it to entirely insulate from judicial review its future decisions of this sort.

¹⁶ *See Technical Employees Ass’n. v. Publ. Empl. Rel. Comm’n*, 105 Wn. App. 434, 439-40, 20 P.3d 472 (2001) (“Here, the Teamsters was a participating party. PERC and the other parties (including TEA) treated the Teamsters as a participating party...And TEA never objected to the Teamsters’ participation.”); *Union Bay Preservation Coalition v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 618-19, 902 P.2d 1247 (1995) (requiring service on parties themselves, rather than attorneys, because “[t]he Legislature...once allowed service on attorneys as well as parties...[but t]he current version of the APA requires a reviewing officer to serve copies of final orders ‘upon each party.’”).

¹⁷ “Further, as stated by applicants, because the Department is prohibited...from conducting adjudicative proceedings on water rights applications, it is not possible for anyone, except perhaps an applicant, to become a ‘party’ to these proceedings in the traditional sense. Finally, as the PCHB noted, the APA defines a party to include persons allowed to ‘participate as a party in the agency proceeding.’[...] We agree with the PCHB that, given its degree of participation, the Yakima Indian Nation was entitled to timely notice of the Department’s decision.” (emphasis added).

C. The Foundation Also Suffered a Competitive Injury, Which Supplies Associational Standing.

The Respondents' arguments as to the Foundation's competitive injury misunderstand either Supreme Court precedent or the Foundation's arguments. *See* SEIU PEAFF's Br., at p. 26 (referring to the "primacy of economic competition"); PDC's Br., at p. 14 ("Community Transit was able to demonstrate that it was directly affected by a PERC decision in the form of an 'economic injury'... Unlike PERC, the Commission has no jurisdiction over public-sector labor relations and collective bargaining."), 19. To be clear, the "bargaining chip" to which the Foundation referred has nothing to do with any leverage in negotiations between public employers and unions over which PERC has jurisdiction; it is the loss of negotiating leverage that it will no longer have in the future, when seeking to "extract concessions" (*see* SEIU PEAFF's Br., at p. 26) from public sector unions in the context of judicial or administrative actions that the Foundation may bring against them, and in which the PDC may very well have jurisdiction.¹⁸

¹⁸ SEIU PEAFF purports to take it as some kind of "judicial admission" that the Foundation and Washington State public employee unions have "opposing interests," but this is merely another reiteration of the threadbare "selective enforcement" position on which SEIU PEAFF's counsel have definitively lost, in one of the related actions they cite, the Teamsters 117 case. *See* SEIU PEAFF's Br., at pp. 23-24, n.7. The selection of campaign finance cases cited by SEIU PEAFF is only but a slice of all the litigation between the Foundation and public employee unions, but would itself be sufficient to demonstrate that the effects of the Foundation losing this bargaining chip are "concrete and particularized," rather than speculative in any sense. *See Spokeo, Inc.*, 136 S.Ct. at 1548-50 ("Although tangible injuries are easier to recognize, we have confirmed in many of our previous cases that intangible injuries nevertheless can be concrete [citing First Amendment cases]"). In short, it is exceedingly likely that SEIU PEAFF (or someone similarly situated) will violate the law again in similar fashion, and that the Foundation will seek to hold it accountable pursuant to the mechanisms that the Legislature has conspicuously provided for that purpose. SEIU PEAFF's puffery aside, it seems pointless to dispute the notion that the Foundation competes and will continue to compete with unions and affiliated entities on an ideological level; even SEIU PEAFF admits it is locked in an "ideological...battle" with the Foundation. *See id.*, at p. 24.

First, it is black letter law that the prejudice sufficient for an “injury-in-fact” need not be economic in nature. *See Association of Data Processing Svc. Orgs. v. Camp*, 397 U.S. 150, 154 (1970);¹⁹ *U.S. v. Students Challenging Regulatory Agency Procedures (“SCRAP”)*, 412 U.S. 669, 687 (1973).²⁰ While Respondents stop short of saying that an economic injury is always necessary, their arguments are nonetheless erroneously fixated on the notion that the “competition” between the Foundation and itself must either be that “...it economically competes with SEIU in the provision of services or bargains with SEIU PEA as part of a contractual relationship.” SEIU PEA’s Br., at p. 27. But this is simply not so – the requirement of economic harm does not constrain the scope of standing generally; likewise, it does not constrain the scope of “competition” sufficient for standing.²¹ Competition in the “marketplace of ideas” need not involve dollars and cents. Would the Respondents’ theory preclude competition for the sort of natural resources at issue in *SCRAP* (and would that make any sense at all, especially given the paucity of such resources in the Washington Metropolitan Area)? Financial competition, while sufficient, is not required;

¹⁹ “A person or a family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause... We mention these noneconomic values to emphasize that standing may stem from them as well as from the economic injury in which petitioners rely here.”

²⁰ “Here...the appellees claimed that the...action of the Commission would directly harm them in their use of the natural resources of the Washington Metropolitan Area.”

²¹ None of the seminal Washington cases that the parties discuss has articulated an “economic” limitation on competition, but they have repeatedly recognized an entity’s interest in impacting the generalized legal and/or regulatory conditions for the sector in which the entity operates, as the Foundation does here. *See Seattle Bldg. & Trades Const. Council*, 129 Wn.2d at 796 (“Existing 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...”); *St. Joseph Hosp. & Health Care Ctr. v. Dept. of Health*, 125 Wn.2d 733, 741, 887 P.2d 891 (1995) (“While the Legislature clearly wanted to control health care costs to the public, equally clear is its intention to accomplish that control by limiting competition within the health care industry.”); *Snohomish Cty.*, 173 Wn. App. at 514.

the Foundation and entities like SEIU PEAFF need only (and undoubtedly do) have that “...concrete adverseness which sharpens the presentation of issues.” *See Baker v. Carr*, 369 U.S. 186, 204 (1962).

Second, while the Foundation’s bargaining chip may be intangible, it is nonetheless real – the ability gained by SEIU PEAFF and other admittedly law-breaking union-affiliated entities to cite the PDC’s decision under review here, to courts, the agency, or to the Foundation itself, in the context of future actions, and the Foundation’s inability to cite a favorable decision arising from the same matter. *See* SEIU PEAFF’s Br., at p. 28; Foundation’s Br., at pp. 20-21, n.11. While SEIU PEAFF obliquely argues that “the PDC has never suggested its enforcement choices are controlled by past ones” (SEIU PEAFF’s Br., at p. 28), the PDC does not join it in that argument. For while it is true that administrative agencies are not strictly bound by *stare decisis* in the sense that courts are, it simply reflects fundamental principles of fairness that “[a]gencies may not treat similar situations in different ways.” *Seattle Area Plumbers v. Washington State Apprenticeship & Training Council*, 131 Wn. App. 862, 879, 129 P.3d 838 (2006) (citing *Vergeyle v. Employment Sec. Dep’t.*, 28 Wn. App. 399, 404, 623 P.2d 736 (1981) (overruled on other grounds)). The “perceptible harm” to the Foundation’s efforts that result from losing decisions is too obvious to be denied, and standing can be found on this independent basis.

For the same reasons as it suffers a competitive harm, the Foundation enjoys associational standing to seek judicial review. SEIU PEAFF protests that the rights to expect even-handed agency decision

making and enforcement of laws seeking to stamp out public corruption, held by each of the Foundation's supporters in the State of Washington, are "...quintessentially generalized interests shared by the public at large." SEIU PEAFF's Br., at p. 39. The PDC argues similarly that Freedom Foundation has not alleged such comparable direct injuries, economic or otherwise, to specific supporters of its organization." PDC's Br., at p. 21.²² But it has long been recognized that simply because "...interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process...we have already made clear that standing is not to be denied simply because many people suffer the same injury." *SCRAP*, 412 U.S. at 686. The Legislature felt it important enough that each voting member of the general public be protected from the ills of "dark money" that it created a procedure that provides not only for an administrative complaint, but that also gives rise to a citizen's action. *See, e.g., Akins*, 524 U.S. at 24-25 ("We conclude that, similarly, the informational injury at issue here, directly related to voting, the most basic of political rights, is sufficiently concrete and specific such that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in federal courts."). Acting pursuant to the Washington FCPA

²² The Foundation has already addressed the PDC's arguments concerning the applicability of *SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978) and *IAFF, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002), *see* Foundation's Br., at p. 31, n.16, and will not do so again here. The PDC had made these arguments below, and simply reproduces them before this Court. *See* PDC's Br., at pp. 20-21. As to the PDC's argument that the Foundation seeks review simply because it "...deems the question it poses to be important" (*see* PDC's Br., at p. 21), not only does this minimize the importance of the elections that the PDC is supposed to serve, it also ignores the case that the Foundation cited, to the effect that traditional notions of standing become somewhat more flexible where such momentous questions of public concern are involved. *See* Foundation's Br., at p. 35 (*citing Wash. Nat. Gas. Co. v. PUD No. 1 of Snohomish Cty.*, 77 Wn.2d 94, 459 P.2d 633 (1969)).

and through the Foundation, whose mission is germane, the Foundation's supporters must similarly be able to vindicate those protections here.²³

D. There Was No Authority for the PDC's Warning Letter, Notwithstanding Respondents' Misinterpretation of the Statute.

1. Section 775 is Unambiguous in What PDC "Must" Do.

The plain meaning of a statute is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *Lake v. Woodcreek Homeowners Ass'n.*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). "A court must, whenever possible, give effect to every word, clause and sentence of a statute." *American Legion Post #149 v. Wash. State Dept. of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008) (internal quotations omitted). Each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole. *Key Bank of Puget Sound v. City of Everett*, 67 Wn. App. 914, 917, 841 P.2d 800 (1992). "A word which is not defined in a statute, but which has a well-accepted, ordinary meaning, is not ambiguous." *Wash. State Coal. for the Homeless v. DSHS*, 133 Wn.2d 894, 906, 949 P.2d 1291 (1997).

²³ The fact that the FCPA was enacted to protect the interests of the public, rather than any particular candidate, and therefore does not imply a private right of action, says very little concerning whether an explicitly-authorized administrative complainant is within the "zone of interests" the statute is intended to protect. *See SEIU PEAFF's Br.*, at p. 30 (*citing Crisman v. Pierce Cty. Fire Protection Dist. No. 21*, 115 Wn. App. 16, 60 P.3d 652 (2002) ("But the various remedies RCW 42.17.390 authorize suggest that the legislature intended not to create private causes of action to enforce the code, but to give the attorney general, county prosecutor, or citizen enforcer considerable latitude in seeking the appropriate relief.") (emphasis added)). Similarly, the widespread impact from the questions before the Court does not undermine the Foundation's position that it is "uniquely situated," inasmuch as it is the entity to actually seek an answer to these questions on behalf of its supporters. *See PDC's Br.*, at p. 21; *SEIU PEAFF's Br.*, at p. 32-33; *see also Foundation's Br.*, at p. 26; *SCRAP*, 412 U.S. at 689 ("But we deal here simply with the pleadings in which the appellees alleged a specific and perceptible harm that distinguished them from other citizens who had not used the natural resources that were claimed to be affected.").

At bottom, the defect with SEIU PEAFF's and the PDC's interpretation of RCW 42.17A.755 is that it ignores the plain meaning of the word "otherwise" in subsection (1)(a) and reads it contrary to long-standing canons of statutory interpretation. In opposing the Foundation's interpretation, which ascribes the same meaning to each of Section 755's uses of the word "otherwise," SEIU PEAFF appears to suggest that the Statute should be understood to present two (2) possibilities – (i) "dismissing the complaint" or (ii) "otherwise resolving the matter in accordance with subsection (2)" – as "discrete" alternatives, instead of overlapping spheres. *See* SEIU PEAFF's Br., at p. 44.

Importantly, Respondents make no effort to explain why the Legislature would first use the word "otherwise" to refer to different species of the same genus (as it is used in RCW 42.17A.755(1)), but then, a few sentences later in subsection (1)(a), use it to mean "alternatively."²⁴ *See Timberline Air Svc., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 313, 884 P.2d 920 (1994).²⁵ If Respondents' interpretation were the intended meaning, the statute could have simply left out this word entirely, in favor of the "disjunctive word or" that would

²⁴ Instead of the "same meaning" rule, SEIU PEAFF seems to (yet again) rely only upon the "last antecedent" rule, in arguing that the phrase "in accordance with subsection (2) of this section" must be understood to modify the immediately-preceding phrase "or otherwise resolve the matter." SEIU PEAFF's Br., at p. 44. Aside from confusing the issue, this argument illustrates why the "last antecedent" is of limited value in interpreting statutes. The Foundation does not dispute SEIU PEAFF's citation of general rules of grammar, but the real issue is in the meaning of the word "otherwise," which is included in the purported "last antecedent." This is an issue that SEIU PEAFF avoids entirely, but the repetition of the word "otherwise," especially in this particular location, presents a clear "contrary intention" as against applying the latter phrase only to "resolve the matter." *See id.* (citing *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 775, 781, 903 P.2d 443 (1995)).

²⁵ "When the same words are used in different parts of the same statute, it is presumed that the Legislature intended that the words have the same meaning."

accomplish that same purpose. *See Homestreet, Inc. v. Dept. of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009).²⁶ Instead, it appears the word “otherwise” was included specifically to denote that a dismissal was included among other ways the PDC could “...resolve the matter in accordance with subsection (2).” *See, e.g., Jin Zhu v. North Cent. Educ. Svc. Dist.-ESD 71*, 189 Wn.2d 607, 620, 404 P.3d 504 (2017)²⁷; *see also Strain v. West Travel, Inc.*, 117 Wn. App. 251, 254-57, 70 P.3d 158 (2003) (rejecting application of last antecedent rule, despite an “errant comma” in the statute, and applying ordinary meaning of “otherwise”). Taking the language of subsection (1)(a) in the context of the entire Section 755, it is clear that if the Legislature had intended dismissal to be a stand-alone option, it would have devoted a separate subsection to it. Instead, it grouped dismissals with other resolutions under subsection (2) – which allows the PDC to “delegate authority” for dismissals and other resolutions to its director if such authority is consistently applied.²⁸

²⁶ “Whenever possible, statutes are to be construed so no clause, sentence or word shall be superfluous, void, or insignificant.” (citations and internal quotations omitted).

²⁷ “This structure strongly suggests that ‘otherwise discriminat[ing]’ for the purposes of RCW 49.60.210(1) must, at a minimum, include the preceding explicitly specified unfair practices, one of which is an employer’s refusal to hire.” As in *Jin Zhu*, consideration of the structure preceding the subsection at issue only buttresses the obvious conclusion that “otherwise” does not mean “alternatively.” First, RCW 42.17A.755(1)(a) mentions dismissals, among the other actions authorized by subsection (2), and refers to that subsection. *See* RCW 42.17A.755. Next, subsection (1)(b) discusses the procedure whereby the PDC would be required to undertake an investigation, pursuant to the authority provided in subsection (3). *Id.* Last, subsection (1)(c) mentions referrals to the Attorney General, pursuant to the authority spelled out in subsection (4). *Id.*

²⁸ The PDC has delegated such authority, including by way of WAC 390-37-060(1)(a), which addresses the circumstances in which dismissal is appropriate – *i.e.*, where the complaint is “obviously unfounded or frivolous, or outside of the PDC’s jurisdiction.” Particularly in light of this regulation, it is ironic for SEIU PEAFF to suggest that “...applying the cross-reference to Subsection (2) to dismissal would produce the absurd result that baseless allegations would require the respondent to execute a stipulation and pay a penalty. This cannot be.” *See* SEIU PEAFF’s Ans. Br., at pp. 45-46. The Respondent is right; such “cannot be,” and the Foundation’s interpretation does not require it to be. But SEIU PEAFF also steadfastly ignores the statutory reference to such delegation, in arguing

Although each of the potential enforcement possibilities is mentioned in subsection (1), they are not there the subject of authorizing language, but rather, are framed as one of the various actions the PDC “must” take in response to a complaint. *See* RCW 42.17A.755(1) (“If a complaint is filed with or initiated by the commission, the commission must...”) (emphasis added). In other words, although subsection (1) clarifies that dismissals are treated the same as other resolutions pursuant to subsection (2), the authority for all those resolutions, and the limitation of same to “complaints of remedial violations and technical corrections,” is apparent in subsection (2).²⁹ RCW 42.17A.755(2) even refers back to subsection (1)(a), reflecting a judgment by the Legislature that while it will

that reading subsections (1) and (2) in harmony will result in “...an infinite loop ping-ponging the reader between cross-references to Subsections (1)(a) and (2)(a),” when the PDC attempts to process “technical corrections” or “remedial violations.” *Id.*, at p. 46. Instead of acknowledging the statutory allowance for discretion in determining when dismissal might be more appropriate than further proceedings for “technical corrections” or “remedial violations,” SEIU PEAFF focuses on the “as appropriate under the circumstances” language in subsection (1) as suggesting that dismissals cannot be grouped with other resolutions of these types of insignificant violations. SEIU PEAFF’s Br., at pp. 47-48. But in requiring the PDC to first conduct a preliminary review before making that determination and ensuring that the choice between dismissal or further proceedings is “appropriate,” the statute implies the necessity for some standards which will be used in making the determination. Those standards, which are promulgated in WAC 390-37-060, make clear that dismissals for “obviously unfounded” complaints are grouped conceptually with other summary dispositions of “technical corrections” or “remedial violations”; indeed, these dispositions are discussed in consecutive subsections of the same regulation. And while subsection (1)(d) does purport to allow the disposition of a warning letter for “minor violations,” *during the relevant time period*, this aspect of the regulation was without any statutory authority. *See infra*, at pp. 20-21.

²⁹ Perhaps the most outlandish argument from Respondents is that “...the Foundation assumes that if dismissals are reserved for remedial violations and technical corrections, all other violations are ‘actual’ ones, which must be addressed through 1(b) or 1(c).” SEIU PEAFF’s Br., at pp. 43-44. The Foundation does not merely or wrongly assume this; the operative statute in 2018 provided as much, in defining actual violations to literally mean any “...violation of this chapter that is not a remedial violation or technical correction.” *See former* 42.17A.005(2) (2018). In fact, the amendment in the current version of the statute that changes the phrase to “violation” and now excludes “minor violations” (*see current* RCW 42.17A.005(53) (2019)) is a compelling indication that “minor violations” – to the extent they even existed, since they were *not* a recognized category – were not excluded from the scope of “actual violations” prior to the most recent amendments.

leave it to the PDC to determine when to dismiss insignificant violations (defined exclusively as “remedial violations” or “technical corrections”) or to “otherwise resolve” them, neither resolution was permissible for “actual violations.” *See De Grief v. Seattle*, 50 Wn.2d 1, 11, 297 P.2d 940 (1956).³⁰

While SEIU PEAFF offers a number of reasons why its admitted campaign finance violations should only be considered “minor violations” (reasons in which the PDC appears to concur) it cannot change the fact that this was an unrecognized and impermissible category for the PDC to rely upon at the time in question.³¹ *See* PDC’s Br., at p. 25 (“The Legislature recently directed the Commission to focus its resources on ‘major violations, intentional violations, and violations that could change the outcome of an election or materially affect the public interest.’”) (emphasis added); SEIU PEAFF’s Br., at pp. 49-50. But at the relevant time, in 2018, Section 42.17A.755 limited the PDC’s discretion with a mandate that it “must” choose one of the alternatives enumerated therein, and the FCPA did not even recognize a category for “minor violations” in its definitions

³⁰ “It is...well-established...that a court may not place a narrow, literal and technical construction upon a part only of a statute and ignore other relevant parts.”

³¹ It is difficult to take seriously SEIU PEAFF’s argument that RCW 42.17A.755 “does not purport to be a taxonomy of violations, much less an exhaustive one.” *See* SEIU PEAFF’s Br., at p. 48. One can accept this position only by determining that “must” does not really mean “must.” Contrary to SEIU PEAFF’s suggestion, the Foundation has articulated from the outset that the reason that “the types of violations referenced in Section 755 are exclusive of any other type,” is that the statute sets forth a number of enumerated options, and provides that the PDC “must” take one of the options catalogued in subsection (1). *See* Foundation’s Br., at p. 38 (“Stated differently, Section 755 reflected a legislative judgment that ‘actual violations’ of the act ‘must’ be pursued in one of the foregoing ways.”) (emphasis in original). Even if the unambiguous “*must*” was missing from the statute, SEIU PEAFF’s absurd position that Section 755 only “happens to mention certain kinds of violations” appears to forget the elementary principle of *expressio unius est exclusio alterius*. *See Killian v. Seattle Publ. Sch.*, 189 Wn.2d 447, 459, 403 P.3d 58 (2017) (“When the legislature expresses one thing in a statute, we infer that omissions are exclusions.”); *In re Eaton*, 110 Wn.2d 892, 898, 757 P.2d 961 (1988) (“In the present case, the statute is not ambiguous. It specifically lists those things the juvenile court can do.”).

section; if a violation was neither a “technical correction” nor a “remedial violation,” it was necessarily an “actual violation” deserving of the PDC’s serious attention.³² See former RCW 42.17A.005(2) (2018); see also *Edelman v. Wash. State Public Disclosure Comm’n*, 152 Wn.2d 584, 589, 99 P.3d 386 (2004).³³ The Court should require that these “actual violations” receive that attention.

2. *The PDC’s Interpretations Warrant No Deference.*

The PDC’s contrary interpretation of the FCPA fails to raise any ambiguity, because it is unreasonable and violates accepted canons of statutory construction, as discussed *supra*. See *Tesoro Ref. & Mktg. Co. v. Dept. of Revenue*, 164 Wn.2d 310, 317-18, 190 P.3d 28 (2008); *State v. Johnson*, 159 Wn. App. 766, 770, 247 P.3d 11 (2011).³⁴ The Respondents identify no textual indication to overcome the “same-meaning” rule, as it applies to “otherwise” (and of course, there is none). See *Umpqua Bank v. Shasta Apartments, LLC*, 194 Wn. App. 685, 693, 378 P.3d 585 (2016).³⁵

³² The PDC relies heavily upon the fact that its own “minor violations” Rule predated the 2018 statutory amendments, and reasons that because those amendments did not explicitly address “minor violations,” the Legislature must have intended to preserve this category. See PDC’s Br., at pp. 27-28 (“The 2018 statutory amendments to RCW 42.17A made as part of ESHB 2938 did not eliminate the Commission’s authority to issue warnings for minor violations. In fact, the amendments did not address the issue ... Prior to the 2018 statutory amendments, WAC 390-37-060 authorized the Commission to issue warning letters. WAC 390-37-060 was amended by the Commission following the passage of ESHB 2938.”). The PDC’s apparent reliance on legislative silence and purported acquiescence in the PDC’s promulgation of its “minor violations” rule – as well as on its novel claimed ability to immunize its rules from attack by amending them after statutory amendments – is woefully misplaced. See *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 716-17, 153 P.3d 846 (2007) (“Moreover, ... ‘legislative acquiescence can never be interpreted as permission to ignore or violate statutory mandates ... Thus, the fact that the legislature has not acted to correct the Department’s mistake is irrelevant.”) (emphasis added).

³³ “The PDC argues that Rule 311 interprets a ‘gap’ in the statutory language ... However, as the Court of Appeals correctly noted, the plain language does address it.”

³⁴ “A possible but strained interpretation...will not render a statute ambiguous.”

³⁵ “If a statute is unambiguous, we apply the statute’s plain meaning without considering other sources of legislative intent.”

Similarly unavailing is the PDC's effort to invoke deference to its self-serving interpretation. *See* PDC's Br., at p. 5. First, it must be noted that the PDC is not uniquely charged with applying the APA, so there is no need for this Court to grant it any deference with respect to its interpretation of APA terms such as "party," "proceeding," "order," "agency action," or "special standing."³⁶ *See* PDC's Br., at pp. 9-11; *supra*, at pp. 1-11; *see also Seattle Bldg. & Const. Trades Council*, 129 Wn.2d at 799;³⁷ *Conway*, 131 Wn. App. at 416 (no deference to interpretation of regulations purporting to limit scope of review of agency action).

Of course, even for statutes an agency *is* charged with administering, the Court's construction of an unambiguous statute should not defer to the administrative interpretation – especially when that interpretation is at odds with the statute and its policy goals. *See Ass'n of Wash. Spirits & Wine Distributors v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 355, 340 P.3d 849 (2015);³⁸ *HomeStreet, Inc.*, 166 Wn.2d at 451-52.; *PUD No. 1 of Pend Oreille Cty. v. Dept. of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744 (2002). Such is the case here, because the interpretation advanced by the PDC runs contrary to decades of established policy under the FCPA. In this

³⁶ Indeed, SEIU PEAFF's admissions that many of these terms are properly interpreted in accordance with the Foundation's positions highlights the unreasonableness of the PDC's interpretations, considering that SEIU PEAFF had every interest in interpreting them contrary to the Foundation. *See* SEIU PEAFF's Br., at pp. 5, 8, 18; *see also supra*, at p. 2.

³⁷ "The issue before the court does not concern the merits of agency action, but whether provisions of the APA apply ... Where the issue is the proper construction of a statute, review is *de novo* ... No deference is due any interpretation given by the Apprenticeship Council as to legislative intent or the statutes' meaning, as deference to agency interpretation of a statute is appropriate only where (a) the statute is ambiguous and (b) the agency is charged with its administration and enforcement."

³⁸ "We do not require agency expertise in construing an unambiguous statute, and we do not defer to an agency determination that conflicts with the statute."

instance, as always, it is the emphatic province of the judiciary to “say what the law is,” and the Court should not hesitate to reject an agency interpretation that so squarely conflicts with that law. *See, e.g., Killian*, 189 Wn.2d at 459 (applying plain meaning and *expressio unius est exclusio alterius* to reject PERC’s interpretation of PECBA); *see also Sellers*, 97 Wn.2d at 325-26 (*citing Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 637 P.2d 652 (1981)); *Cockle v. Dept. of Labor & Indus.*, 142 Wn.2d 801, 812, 16 P.3d 583 (2001).

The FCPA’s stated intention is to “[e]nsure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes.” *See* RCW 42.17A.400(1).³⁹ “Initiative 276 was designed to inform the public and its elected representatives of expenditures made by persons whose purpose it is to influence or affect the decision-making processes of government.” *State v. Dan J. Evans Campaign Committee*, 86 Wn.2d 503, 507-08, 546 P.2d 75 (1976). Further, the FCPA is perfectly unequivocal in its mandate that it be “...liberally construed to effectuate the policies and purposes of this act.” *See* RCW 42.17A.001; *Seeber*, 96 Wn.2d at 140 (*citing former* Section 42.17.920).

The PDC’s interpretation of RCW 42.17A.755, however, allows it to unilaterally ignore significant, admitted, “actual” violations of the statute that citizens may bring to its attention, based on such amorphous determinations as whether the violation “materially affect[s] the public

³⁹ As such, “[t]he provisions...shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying ... so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.” *See* RCW 42.17A.001.

interest,” or whether the information that a political committee fails to disclose is “critical.” *See* PDC’s Br., at pp. 26-27. This untethered discretion cannot be consistent with the Legislature’s goals as set forth in the FCPA.⁴⁰

II. CONCLUSION

The Foundation has both individual and associational standing to seek judicial review of the PDC’s dismissal of its campaign finance complaint. The FCPA explicitly requires the procedure that the Foundation availed itself of, and the PDC treated both the Foundation and SEIU PEAFF as “parties” in the brief administrative “proceeding” that transpired prior to the Foundation’s seeking judicial review of the PDC’s legal determinations under the APA. As such, the Foundation respectfully submits that the Court should proceed to the merits and interpret RCW 42.17A.755, a step which both of the Respondents seem to recognize is inevitable, in devoting outsized portions of their briefing to the interpretational question.

⁴⁰ Another way that the Legislature has protected the interests of “individuals and interest groups” is through the citizen’s action procedure, which has always been understood to act as a check on government officials’ handling of campaign finance allegations – including decisions not to initiate enforcement proceedings under the Act. *See Utter v. Bldg. Indust. Ass’n of Washington*, 182 Wn.2d 398, 411, 341 P.3d 953 (2015) (“The statute is obviously based on the notion that the government may be wrong, and then it is up to citizens to expose the violation.”) (emphasis added). Notably, the Foundation objects to the PDC’s extended and sustained effort to put before this Court the issue of when citizen’s actions remain available under the latest amendments to the FCPA. *See* PDC’s Br., at pp. 2, 29-33; *see also* PDC’s Motion to Stay, at p. 2 (“Under the same superior court cause number, Freedom Foundation sought to bring a citizen action in the name of the State against SEIU PEAFF.”). The PDC’s characterizations of the pleadings here are incorrect, and issues concerning the availability of a citizen’s action are well beyond the scope of the instant appeal. *See* Foundation’s Br., at pp. 3-4. But it is hardly “...disregard[ing] the fundamental changes made to the statute in 2018” (*see* PDC’s Br., at p. 30), for the Foundation to make reference to these policy aims in construing the amended statute, and the PDC is simply incorrect that “...*Utter’s* discussion of when a citizen action may be pursued is no longer applicable to citizens who seek to sue under RCW 42.17A in the name of the state.” *Id.*, at 31. To the contrary, *Utter* articulated time-honored statements of Washington State public policy that have continuing relevance and vitality.

Furthermore, in interpreting the 2018 amendments to the FCPA, it is imperative for the Court to consider whether the Legislature intended to undo the statute's longstanding and salutary policy goals, in favor of handing the PDC the ability to unilaterally abdicate its unambiguous statutory duties. Such an interpretation should be rejected by this Court. While perhaps it is to be expected for the well-funded and avowedly political SEIU PEAFF to advance such a position, it is simply irresponsible (as well as arbitrary and capricious) for the PDC – the agency charged with ensuring maximal public information concerning elections – to do so. In any event, the FCPA amendments reflect no intent to depart so markedly from how the statute has been understood throughout its history, including by the state Supreme Court in *Utter*.

RESPECTFULLY SUBMITTED on April 8, 2020.



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DECLARATION OF SERVICE

I, Jennifer Matheson, hereby declare under penalty of perjury under the laws of the State of Washington that on April 8, 2020, I filed the foregoing document in the Washington State Court of Appeals Division II and served a courtesy copy via email to the following:

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April 08, 2020 - 2:59 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53889-0
Appellate Court Case Title: Freedom Foundation, Appellant v Public Disclosure Commission, et al Respondents
Superior Court Case Number: 19-2-02843-0

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