Supreme Court No. 96063-1

Court of Appeal No. 76510-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE HOUSING FINANCE COMMISSION,

Petitioner,

v.

NATIONAL HOMEBUYERS FUND, INC., et al.,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Washington State Housing Finance Commission brought this action to stop National Homebuyers' Fund, Inc. ("NHF") from providing downpayment gifts to Washington residents. The Court of Appeals correctly held that the Commission has no standing to challenge those gifts because: (1) the Commission does not fall within the zone of interests of any law prohibiting NHF's gifts (indeed, no such law exists), and (2) the Commission has not demonstrated that competition from NHF causes any injury to a legally protected interest of the Commission.

The Petition claims that review is warranted under RAP 13.4(b)(1) because of alleged conflicts between the decision below and prior decisions of this Court and under RAP 13.4(b)(4) as a matter of substantial public interest. In fact, the decision is entirely consistent with this Court's prior cases on standing, none of which recognize the broad right to exclude competitors that the Commission asserts here. Nor does this case involve an issue of substantial public interest. Whether the Commission can increase its share of the downpayment assistance market by suing to exclude NHF is, at most, a matter of interest for the Commission and NHF, and the Commission provides no support for its hyperbolic insistence that this case will have a broad public impact. The Petition for Review should be denied.

II. COUNTERSTATEMENT OF THE CASE

A. Both NHF and the Commission Offer Downpayment Assistance to Washington Homebuyers

The National Housing Act delegates to the Secretary of the U.S. Department of Housing and Urban Development (HUD) the power to approve mortgages, which are insured by the Federal Housing Administration (FHA), "upon such terms as the Secretary may prescribe." 12 U.S.C. § 1709 (a). Under that authority, HUD's regulations and underwriting policy detail what loans it will insure. *See, e.g.*, 24 C.F.R. Part 202.1; HUD Policy Handbook 4000.1 (issued Dec. 30, 2016).[1]

Homebuyers must make a downpayment of at least 3.5 percent to obtain an FHA-insured mortgage. 12 U.S.C. § 1709(b)(9)(A). FHA will insure mortgages when the downpayment is provided as a gift from family, friends, charitable organizations, employers, labor unions, governmental agencies, or public entities. Handbook at 230. HUD does not "approve" those who provide such gift assistance, but instead regulates approved *lenders*, 12 U.S.C. § 1709(b), who must ensure the gift comes from an acceptable source consistent with HUD's underwriting requirements, 24 C.F.R. § 203.5(c). HUD's Mortgagee Review Board enforces HUD's underwriting policy and is empowered to seek penalties against an offending lender, including

[1] References to the "HUD Handbook" refer to the FHA Single Family Housing Policy Handbook 4000.1, available at https://www.hud.gov/sites/documents/40001HSGH.PDF.

withdrawal of FHA approval. *See* 12 U.S.C. § 1708(c).

Downpayment assistance may also come in the form of secondary financing, or a second mortgage. Unlike gifts, secondary financing—which puts the homebuyer further in debt—may only be provided by governmental entities and nonprofit entities approved by HUD. Handbook at 235-38.

NHF provides gifts to low and moderate income homebuyers, who are under no obligation or expectation to repay them. CP 669-70. Unlike NHF, the Commission offers secondary financing, which creates a lien on the property and must be repaid. Handbook at 235; CP 386-87.

NHF began offering gift assistance indirectly to Washington homebuyers through originating lenders in 2014. CP 5. Obviously, receiving a gift rather than another loan is an attractive option to many homebuyers. Because the Commission feared that the availability of NHF's gift assistance would attract homebuyers to lenders who worked with NHF, the Commission decided to try and shut down NHF's program in Washington.

B. The Commission Sues NHF

The Commission initially complained to HUD officials, claiming that NHF should not be providing gift assistance. This strategy failed. CP 752, 846, 1001. The Commission then filed this action seeking declaratory judgment that NHF's "ongoing activities in Washington are unauthorized and may not continue," as well as an injunction prohibiting NHF from

providing such assistance in Washington. CP 10–11.[2]

From the inception of the case and throughout dispositive motions practice under CR 12 and CR 56, NHF challenged the Commission's standing under the Uniform Declaratory Judgment Act. NHF repeatedly pointed out that the Commission has no license, franchise, or monopoly over providing secondary financing in Washington. Indeed, the Commission is only one of dozens of entities in Washington offering secondary financing. CP 835-36. Nor does the Commission have enforcement powers that enable it to police the downpayment assistance or mortgage markets. Finally, the Commission has no private right of action to enforce HUD or FHA underwriting guidance. Equally problematic, the Commission has never been able to demonstrate any cognizable injury to a legally protected interest resulting from NHF's activities.

Following discovery, the parties cross-moved for summary judgment, which the trial court denied, setting the matter for trial. CP 1254–55. The Commission then moved for reconsideration, which the trial court granted in a summary judgment order containing no analysis and failing even to identify the law that NHF's activities purportedly violate. CP 1287.

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[2] No Washington law forecloses a California nonprofit public benefit corporation like NHF from giving gifts to whomever it wants—including Washington homebuyers. CP 544. California law enables NHF to do business in any state. CAL. CORP. CODE § 5140. And federal law—which does not regulate gift-givers at all—in no way precludes NHF's gift assistance. The Court of Appeals did not reach these alternative grounds for reversal.

C. The Court of Appeals Confirms the Commission Lacks Standing

The Court of Appeals agreed with NHF in a unanimous opinion that the Commission lacked standing to bring this action. First, the court held that the Commission does not fall within the zone of interests of any relevant Washington or federal law. Additionally, the court noted that the Commission failed to present any evidence of a legally protected economic loss or injury. The court reversed the judgment and remanded with instructions to dismiss. The Commission now seeks review before this Court under RAP 13.4(b)(1) and (4).

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals' Decision Does Not Conflict With Any Decision of This Court

1. The Court of Appeals' zone of interests analysis is consistent with this Court's precedents.

The Court of Appeals followed this Court's guidance that "[a] law's zone of interests is ascertained by examining the operation of the statute and the statute's general purpose." App. 6-7 (citing *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 304-05, 268 P.3d 892 (2011)). The Commission does not even specify what legal provision it is suing to enforce, much less show that it is acting within the zone of interests protected by that provision.

a. Chapter RCW 43.180 does not create standing here.

The Commission argues that its lawsuit falls within the zone of

interests protected by its enabling act, chapter 43.180 RCW. But because the legislature authorized the Commission to act merely as "a" (not "the") conduit in providing downpayment assistance, the Commission cannot (and does not) claim NHF is violating this statute. RCW 43.180.010. As the Court of Appeals correctly held, this statutory scheme "does not include enforcement power" and thus the Commission "does not have statutory authority to regulate other entities who participate in the housing programs." App. 7. The Commission agrees it has no statutory power to regulate or police its competitors. Instead, the Commission attempts to distort inapposite decisions from this Court into a broad rule that would allow it to sue any competitor whom it claims is acting unlawfully. The Court of Appeals correctly rejected those arguments.

(1) This Court has never held that any actor can sue any competitor whose actions are allegedly unlawful.

First, the Commission argues that this Court has "repeatedly" "held that authorized actors have standing, as a matter of law, to enjoin competitors lacking the same requisite authority." Pet. at 11. For this dubious principle, it cites *Day v. Inland Empire Optical, Inc.*, 76 Wn.2d 407, 456 P.2d 1011 (1969) and *Puget Sound Traction, Light & Pwr. Co. v. Grassmeyer*, 102 Wash. 482, 173 P. 504 (1918). But neither *Day* nor *Grassmeyer* support its position.

First the Commission argues that under *Day*, "licensed members of a … trade … may [] utilize the courts to prevent unlicensed persons from

engaging in the … trade." Pet. at 12-13 (quoting *Day*, 76 Wn.2d at 416-17). The Commission's heavy use of ellipses distorts *Day*'s holding. In *Day*, this Court held that licensed ophthalmologists and opticians may enjoin other licensed ophthalmologists from patient referrals in violation of state laws prohibiting rebates or profits from medical referrals. *Id.* at 417-421. *Day* held that "one lawfully engaged in the practice of a licensed profession has a legal and equitable right to insist that others practicing abide by the ethical standards and comply with the laws governing the practice." *Id.* at 417. The same rule *Day* applied has been employed in "so-called franchise and license cases" across the country, in recognition that a governmental grant of a franchise or license confers a property right that will be protected against invasion. Louis Altman & Malla Pollack, 3 CALLMAN ON UNFAIR COMPETITION, Trades & Monopolies § 16.4 (4th ed.).

Grassmeyer applies this same rule. This Court held that the holder of a state-issued franchise to run street railways had standing to sue and enforce a prohibition on privately operated buses which risked physical injury to the licensed street cars. The Court reasoned that the buses' unlawful presence made them a "nuisance per se" and thus could be enjoined "by any one suffering a special injury thereby." *Grassmeyer*, 102 Wash. at 490.

Neither *Day* nor *Grassmeyer* supports the Commission's broad insistence that it can sue anyone who competes with it. Neither the

Commission nor NHF are "engaged in the practice of a licensed profession." *Day*, 76 Wn.2d at 417. Nor is either operating under the grant of a franchise to use the public right of way, as in *Grassmeyer*. The rule recognizing standing for holders of licenses or franchises does not apply to the Commission.

No law limits downpayment gift assistance to pre-approved or "authorized" entities. The Commission needed authorization from the legislature to provide secondary financing because it is a creature of Washington statute, not because HUD requires (or even recognizes) any type of "authorization" by the states. The analogy the Commission attempts to draw to licensed professions or public franchises is thus wholly inapt.

(2) This Court has never held that an "authorized public agency may challenge another entity for engaging in unauthorized competition."

The Commission next claims that "this Court has also made clear that an authorized public entity may challenge another entity for engaging in unauthorized governmental competition in its territory." Pet. at 12. But neither *Skagit County* nor *Alderwood*—the cases on which the Commission relies—help it, as neither case involved standing. Instead, these cases stand for the proposition that when the legislature intends to delegate exclusive authority within a particular jurisdiction, the Court will uphold and enforce the legislature's intent. But here, NHF is a private corporation and not a governmental entity, as the Court of Appeals recognized: "NHF does not

purport to act as a government entity in Washington." App. 9 n.4.[3]

Thus in *Skagit County*, the Court "closely examine[d] the statutes conferring authority on the [Public Hospital Districts ('PHDs')]" and determined that the Legislature did not mean to "allow one rural PHD to raid the territory of another." *Skagit Cnty Pub. Hosp. Dist. No. 304 v. Skagit Cnty Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 726, 305 P.3d 1079 (2013). And in *Alderwood*, the Court determined that the "statutory prohibition against the geographical overlapping of water districts obviously carries with it an implication that one water district should not infringe upon the territorial jurisdiction of another water district…" *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 322, 382 P.2d 639 (1963).

These two cases do not create any standing rule, have no bearing on this case, and do not provide any conflict with the Court of Appeals' decision under RAP 13.4(b)(1).

b. This Court has never held that there is a private right of action to enforce HUD Guidelines, and the federal courts have consistently held there is not.

Finally, the Commission argues that it falls within the zone of interests of HUD underwriting guidance. But this Court has never recognized a private right of action to enforce HUD regulations (much less

[3] While NHF does not exercise governmental powers in Washington, it is a "Section 115" entity under the Internal Revenue Code and therefore qualifies as an "instrumentality of government" within the meaning of HUD's underwriting guidelines. *See* App. 9 n.4.

HUD guidelines), and therefore there is no basis for review under RAP 13.4(b)(1). Moreover, courts across the country have uniformly recognized that there is *no* private right of action to enforce either the National Housing Act or the HUD policy implementing it. *See, e.g.*, *Three Rivers Ctr. for Indep. Living, Inc. v. Hous. Auth.*, 382 F.3d 412, 431 (3d Cir. 2004) (HUD accessibility regulations do not provide a private right of action); *Talton v. BAC Home Loans Servicing* LP, 839 F. Supp. 2d 896, 911 (E.D. Mich. 2012) ("no private right of action for breach of HUD's mortgage servicing policies"); *Hayes v. M & T Mortg. Corp.*, 389 Ill. App. 3d 388, 906 N.E.2d 638, 642, 329 Ill. Dec. 440 (2009) (HUD FHA-insured mortgage regulations do not create a private right of action); *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 922 A.2d 538, 543-44 (2007) (FHA and HUD regulations do not create private right of action; citing 12 more cases).

Ignoring this law, the Commission attempts to manufacture for itself a private right to enforce HUD underwriting guidelines against NHF. The Commission suggests standing arises out of the fact that, in general, federal housing programs involve "cooperative federalism." Pet. at 15-16. Setting aside the fact that downpayment assistance does *not* involve any such "cooperative federalism,"[4] the Commission fails to mention that standing

[4] The cases the Commission cites involve very different federal housing programs where the federal government gives money to designated state agencies for use and distribution. For

existed in the cases it cites for reasons having nothing to do with cooperative federalism.

For example, *RAC* involved the Public Records Act (PRA). This Court held that the housing authority was still subject to the PRA notwithstanding its parallel regulation by HUD. *RAC*, 177 Wn.2d at 431-44. In other words, standing in *RAC* was predicated on the PRA, which itself gave the Council substantive rights to records. The Council, having requested certain grievance hearing decisions that the housing authority improperly withheld, certainly fell within the "zone of interests" of the PRA. Here, by contrast, HUD underwriting guidance does not give the Commission any private right that it can enforce.

In *City of Tacoma v. Taxpayers of Tacoma*, 49 Wn.2d 781, 307 P.2d 567 (1957), *rev'd on other grounds*, 327 U.S. 320 (1958), this Court held that a federal statute cannot give a city the power to condemn state land previously committed to public use where the state did not give it that power. *Id.*, 49 Wn.2d at 800. While the Commission cites the case accurately for the proposition that the powers of a state agency are "peculiarly within the

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example, *Resident Action Council v. Seattle Hous. Auth.* (RAC), 177 Wn.2d 417, 429, 327 P.3d 600 (2013) involved a local housing authority established under a framework "in which state agencies are given broad responsibility and latitude in administering [federal] welfare assistance programs" under a form of "cooperative federalism." The housing authority was created by the Washington Legislature and "coordinated with HUD to receive federal assistance and is now subject to certain federal regulations." *Id.* at 429-30. No case has ever applied the "cooperative federalism" principle governing federal-state housing authority partnerships to downpayment assistance for FHA-insured mortgages.

province of the courts of this state," the Commission fails to mention that standing existed in that case because it was brought by taxpayers. It is well settled that taxpayers may have standing in certain "limited circumstances" to question the limits of governmental authority. *See Huff v. Wyman*, 184 Wn.2d 643, 649, 361 P.3d 727 (2015). But *City of Tacoma* provides no basis for standing here, where the Commission does not claim taxpayer status, and could not do so (and in any event, NHF is not acting in a governmental capacity).

Finally, the Commission's suggestion that it may have standing because HUD's Mortgagee Review Board does not directly regulate gift-givers like NHF (or, for that matter, a homebuyer's relative) only underscores why no standing exists here. HUD directly regulates its approved *lenders*, who are responsible for determining whether downpayment assistance comes from a source consistent with HUD's underwriting manual. If the lenders fail to ensure this, HUD can seek penalties and withdraw the lender's approval.[5] The fact that HUD does *not* regulate providers of gift assistance provides one more reason that the Commission lacks a private right of action, and therefore lacks standing under the UDJA. Regardless, this point has no

[5] The Commission's statement that "[l]enders could not be and are not expected to resolve disputes between ostensibly public entities over the allocation of government authority in each state," Pet. at 16, is beside the point. This case is about whether NHF, a nonprofit, may give Washington homebuyers cash gifts to be used toward a downpayment, not about any "allocation of government authority."

connection to RAP 13.4(b)(1), as no decision of this Court bears on the effectiveness of the Mortgagee Review Board and any implications for standing that might result.

The Commission has failed to show *any* conflict between the Court of Appeals' decision and *any* prior decision of this Court concerning the zone of interests requirement. As a result, review should be denied under RAP 13.4(b)(1).

2. This Court of Appeals' alternative injury analysis is consistent with this Court's precedents

a. This Court has never held that, in the absence of a monopoly, loss of business through competition is a protected injury.

The Court of Appeals also held that "WSHFC's claims of injury are merely speculative." App. 10. The Commission argues that this conflicts with the Court's precedents that injury "is a modest requirement" where even the "potential for loss" is enough. Pet. at 18. The flaw in the Commission's argument is that the "potential injury" must be to a legally protected interest. The Commission points to no prior case from this Court holding that the competitive loss of market share, *see* App. 10, is a protected interest. *See Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 5–6, 88 S. Ct. 651, 19 L. Ed. 2d 787 (1968) ("This Court has . . . repeatedly held that the economic injury which results from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of its competitor's

operations."). The cases the Commission cites have no bearing on this question.

In *Nat'l Elec. Contr. Ass'n v. Riveland*, 138 Wn.2d 9, 978 P.2d 481 (1999), a group of electrical unions sought a declaration that the Department of Corrections had to comply with various state laws, including electric licensing, prevailing wage, and competitive bidding, before using inmate labor. This Court held that the unions had standing to sue because the union and its licensed members had a *legally protected* pecuniary interest in competing for the work. *Id.* at 25. In *Wash. Ass'n for Substance Abuse & Violence Protection v. State*, 174 Wn.2d 642, 653, 278 P.3d 632 (2012), this Court held that an individual and a non-profit corporation had sufficient injury for standing to challenge the restricting of Washington's regulation of liquor because the individual had leased property from the state to sell liquor under the prior regime and the non-profit's "goals of preventing substance abuse could be reasonably impacted" by the new laws.[6] Neither case recognizes the type of broad competitor standing, untethered to specific state regulations, asserted by the Commission.

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[6] The Commission also cites *City of Burlington v. Wash. State Liquor Ctrl. Bd.*, 187 Wn. App. 853, 351 P.3d 875 (2015), where the City sued the Board for granting an alcohol license near a high school in the City. The Court of Appeals found that the City "demonstrated that minors regularly come into contact with the minimart and that criminal activity is common in the area" and thus that the use was inconsistent with the City's land use planning. *Id.* at 869-70. That obviously bears no relationship to this case.

The Commission claims that "altered competitive conditions" are "sufficient to satisfy the injury-in-fact requirement." Pet. at 17. (quoting *Seattle Bldg. & Constr. Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 920 P.2d 581 (1996)). Once again, the elided words matter, as the case the Commission cites does not stand for such a broad proposition. Instead, the Court held that a regulated party can sue the agency regulating it and noted that "[t]he United States Supreme Court 'routinely recognizes probable economic injury resulting from agency actions that alter competitive conditions as sufficient to satisfy' the injury-in-fact requirement." *Id.* at 795 (citation omitted). The case in no way suggests that *competitors* can sue *each other* whenever "competitive conditions" change.

b. This Court has never held that a government agency can sue anyone offering services that the agency believes are inconsistent with its "goals."

The Commission next argues that it has suffered injury to a legally protected interest because NHF gives homebuyers grants rather than loans. This argument is specious. First, the Washington Legislature has not attempted in any way to regulate this area, much less to prohibit persons from providing gifts or grants. RCW 43.180.050(1)(d) regulates what *the Commission* does, not what any other entity should do. The legislature's determination that *the Commission* should make loans instead of making

potentially unconstitutional gifts of public funds[7] does not establish a policy that other entities should not make downpayment assistance gifts.

Second, public agencies do not have a free-standing power to sue any private party acting in a manner the agency claims is inconsistent with its "goals." *See Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 132, 115 S. Ct. 1278, 131 L. Ed. 2d 160 (1995); *Wash. State Human Rights Comm'n ex rel. Spangenberg v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 126, 641 P.2d 163 (1982).

The Commission attempts to analogize to *Wash. Ass'n for Substance Abuse and Violence Protection*, but, as discussed above, that case involved a private association's standing to challenge legislation. 174 Wn. at 653. It does not create an all-purpose standing rule allowing competitors to sue each other for "violating" the other's "goals."

c. This Court has never held that a government agency like the Commission has standing to sue for alleged injury to its customers or mission.

Finally, the Commission argues that "public agencies suffer a representative injury when their constituents are affected or their mission is frustrated." Pet. at 19. The Commission claims that it has a broad "duty" to "promote Washington's housing finance policies and serve its residents." *Id.*

[7] See *Gen. Tel. Co. of Nw. v. Bothell*, 105 Wn.2d 579, 588, 716 P.2d 879 (1986) ("[F]or purposes of Const. art. 8, § 7, a gift is a transfer of property without consideration and with donative intent.").

The Commission's argument, if accepted, would give it standing to sue any person or entity involved with housing finance in Washington.

A governmental entity may only assert claims on behalf of its citizens if it has been authorized to do so. *Grant Cty. Fire Prot. Dist. No. 5 v. Cty. of Moses Lake*, 150 Wn.2d 791, 804, 83 P.3d 419 (2004) (fire districts have no representative standing on behalf of their citizens). Here, the Commission has not been granted such power. It is the Washington Attorney General who has plenary power to sue to enforce laws. RCW 23.95.555; *see also State v. Nat'l Mercantile Co.*, 87 Wash. 108, 109, 151 P. 244 (1915). The Commission is simply one participant in the market for downpayment assistance. App. 7-8.

Contrary to the Commission's argument, nothing in *City of Seattle* supports the broad standing rule the Commission attempts to draw from it. There, the Court held that the City could challenge special legislation under article 11, section 10 of the state constitution, which would affect its ability to annex territory, and could assert an equal protection claim on behalf of its potential residents to determine whether the process by which it annexes territory is constitutional. *City of Seattle v. State*, 103 Wn.2d 663, 669, 694 P.2d 641 (1985). The case recognizes an entity's clear, logical interest in challenging laws that directly govern its *own* conduct, not a broad rule that an agency may challenge the conduct of *another* entity whenever it might somehow affect its "mission."

The Commission's citation to *Seattle Sch. Dist. No. 1* is equally inapposite. That case involved a school district's complicated challenge to the State's method of funding public education. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 485-86, 585 P.2d 71 (1978). This Court held that the school district clearly had standing to challenge the constitutionality of the school financing system.

> [W]hat could be more fundamental to the maintenance of schools, and an educational program, than an action seeking to obtain sufficient revenue to keep a district operating with its basic programs intact so as to comply with the mandate of Const. art. 9, §§ 1 and 2? What could be more fundamental than respondent District's need for review of a system of public school financing that undermines its means of existence? When school districts are forced into litigation or potential litigation as parties defendant, how can it be said they lack sufficient interest to challenge the constitutionality of the very system of financing which forces them into that untenable position?

Id. at 494.

Seattle School District No. 1 thus involved a direct challenge by the District to the very laws that funded it and enabled its existence. The case in no way holds that an agency has standing to sue a competitor whenever it believes its "constituents are affected or [its] mission [is] affected." Pet. at 19.

There is little doubt that the Commission would have standing to sue the State over the constitutionality of laws impacting the Commission's functions under *City of Seattle* and *Seattle Sch. Dist. No. 1*. But this is not such a case. The Court of Appeals' conclusion that the Commission has not shown any injury to its legally protected rights is entirely consistent with this Court's

prior standing cases. For this reason too, review should be denied.

B. No Issue of Substantial Public Importance Is at Stake Warranting This Court's Intervention

Review under RAP 13.4(b)(4) is reserved for cases presenting issues "of substantial public importance that should be determined by the Supreme Court." Cases meriting review under RAP 13.4(b)(4) have presented issues of great public importance, such as whether every sentencing proceeding in Pierce County over a period of several years was invalid based on an ex parte communication, *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005), whether the state or federal Indian Child Welfare Act permitted termination of a non-Indian's parental rights without a showing that efforts were first made to remedy parental deficiencies, *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 383 P.3d 492 (2016), or whether removal of an entire class of sex offenders from registration requirements—seriously affecting the public safety—was correct, *In re PRP of Arnold*, 189 Wn.2d 1023, 1092, 408 P.3d 1091 (2017).

This case raises no such issue. The Commission presents a single paragraph dramatically characterizing the case as bearing on the provision of decent housing for Washingtonians, economic stability, and avoiding a subprime mortgage crisis like the one triggering the 2008 recession. This overblown framing is inaccurate for many reasons, most fundamentally because this case presents a narrow question of standing relevant only to the

specific parties before the Court; i.e., whether the Commission has standing to seek the ouster of a competitor that gives cash gifts to homebuyers, including those in Washington, with the full cooperation of lenders across the nation, paired with mortgages that FHA subsequently insures as a matter of course. The Court should deny review under RAP 13.4(b)(4).

IV. CONCLUSION

The Court of Appeals decision is not in conflict with any decision of this Court and does not involve an issue of substantial public interest that should be determined by this Court. The Commission's Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 10th day of September, 2018.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 1, 2017, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

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DATED this 10th day of September, 2018, at Seattle, Washington.

Thao Do, *Legal Assistant*

MCNAUL EBEL NAWROT AND HELGREN PLLC

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