NO. 1043678

SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL MARIANI ET AL.,

Petitioner,

v.

DEPARTMENT OF FINANCIAL INSTITUTIONS,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Washington residents Gary and Irene Cline owned real estate with substantially increased in value over time. In order to achieve investment growth from the proceeds of the sale of that real estate, and to defer taxes that would be due, the Clines invested in a Deferred Sales Trust that was specifically tailored to their needs. This mechanism called for the proceeds from the sale to be placed in a trust and then invested by the Trustee, Petitioners, Michael Mariani and Prestige Management, LLC, in a manner consistent with the recommendations of Mariani's selected investment advisor. The Clines would then be paid the proceeds of the sale over a period of time and at an interest rate specified by a promissory note.

On the particular facts of this case, the Court of Appeals held that this Deferred Sales Trust and Promissory Note were security, that substantial evidence supported the finding that they weres offered by Mariani and Prestige, and the Deferred Sales Trust fails to satisfy the exemption requirements. The Court of

Appeals decision does not warrant this Court's review. The decision does not upend decades of legal precedent. Likewise, the opinion does not present an issue of broad public import as the Court of Appeals opined only the Deferred Sales Trust arrangement as offered and tailored to the Clines. Petitioners' Petition for Review does not meet the criteria in RAP 13.4(b) and review should be denied.

II. STATEMENT OF THE ISSUES

For the reasons set forth in Section IV, the issues raised in Petitioners' Petition for Review do not meet the standard of discretionary review under RAP 13.4(b). If review were accepted, the issues before the Court would be:

1. Whether the Deferred Sales Trust and accompanying Promissory Note is a security, as defined in RCW 21.20.005(17)?

2. If the Deferred Sales Trust and accompanying Promissory Note is a security, whether substantial evidence supports the finding that Mariani and Prestige offered it to Gary and Irene Cline?

3. Whether Mariani and Prestige are exempt from registering the Deferred Sales Trust and accompanying Promissory Note?

III. STATEMENT OF THE CASE

A. Standard Deferred Sales Trust Transaction

In a standard Deferred Sales Trust (DST) arrangement, the owner of an appreciated asset sells the appreciated asset to a trust; the trust then sells the asset to a third-party buyer, invests the proceeds from the sale, and gives the asset seller a promissory note for a future stream of payments made on an installment schedule. CP 12. No taxes are due until the asset seller receives a payment. *Id.*

The proceeds of the asset sale are deposited into an account owned by the trust. CP 13. The trustee is empowered to invest the assets of the trust. *Id.* The trustee generally attempts to invest the trust assets in a way that will maximize the return of the trust's investments so that the trust makes more money than the original obligation on the note. *Id.* If the trustee can generate more money from the trust assets than necessary to pay the trust obligations on the promissory note, the trustee retains the excess. *Id.* On the other hand, if the investments perform poorly, the asset seller will receive only partial payment and has no recourse against the trustee. *Id.*

B. Establishment of Lake Cavanaugh Trust

In 1976, the Clines purchased a vacation home (Lake Cavanaugh property) for $15,000. CP 11. By 2013, the Lake Cavanaugh property had appreciated to over $200,000. *Id.* Concerned with the amount of federal capital gains tax they would have to pay if they sold the property, the Clines consulted Robert Binkele, a registered investment advisor with over thirty

years experience. CP 11-12. Binkele and the Clines discussed the process by which the Lake Cavanaugh property could be sold to a DST, then sold again by the trust to a third-party buyer. *Id.*

In July 2013, the Clines retained Todd Campbell's services as an attorney to create a DST for the Lake Cavanaugh property. CP 14 (FOF 5.22, 5.23). Campbell created the Declaration of Trust, Promissory Note and other documents in connection with the Lake Cavanaugh Trust (Trust). *Id.* (FOF 5.23). In addition to being the attorney for the Clines, Campbell was also the attorney for Prestige, a company that served as both the grantor and the trustee in the DST. CP 14.

Campbell gave the Clines a Disclosure and Waiver of Conflict of Interest, which stated that he was working on behalf of Prestige. CP 2203--06. In that document, Campbell explained that he "will be representing Prestige in this transaction as[he

has] represented them in similar transactions over the years. . ." *Id.*

The next month, Prestige and Mariani, a Certified Public Accountant and manager of Prestige, established the Lake Cavanaugh Trust. CP 14. A few months later, the Clines sold the Lake Cavanaugh property to the Trust. CP 15. The Trust later sold this property to a third-party buyer for $50,000 upfront plus an additional $188,000 to be paid over several years. *Id.* The funding for the Trust came entirely from the sale of the Lake Cavanaugh property. CP 16.

Prestige served as the grantor, the trustee, and the beneficiary of the Trust. Mariani, as manager of Prestige, retained Binkele to provide the Trust with investment recommendations and to manage the Trust money to ensure coverage of the promissory note terms. *Id.* Prestige and Binkle had previously participated in 11 other DST transactions outside of Washington between August 2011 and August 2013. CP 1679.

Binkele had managed the money and investments for between 400 and 500 DSTs in the past. *Id.* (FOF 5.46).

In December 2013, the Estate Planning Team provided a Risk Tolerance Questionnaire to the Clines for Prestige and Binkele to choose the DST target asset allocation and promissory note terms. CP 1686. This Risk Tolerance Questionnaire indicated the Clines were interested in long-term growth and anticipated needing the funds in six to ten years. CP 18, 1686-87. Binkele found Gary Cline's general investment knowledge to be good, but limited. *Id.*

C. Terms and Management of the Lake Cavanaugh Trust

The power of the Lake Cavanaugh Trust resided with the Trustee according to the Agreement and Declaration of Trust, which allowed the Trustee to engage in all activities and transactions deemed necessary. CP 16.

As the Trustee, Prestige was the "arbiter of the funds." *Id.* And as the Manager, "Mariani's motive was to preserve the

[T]rust's assets and to make more money than what the Trust was obligated to pay the Clines on the promissory note." *Id.*

The Clines indicated to Campbell that they wanted the Trust to accrue at eight percent and would want to set payouts from the Trust beginning in 2014 or at some later date. CP 17. A draft promissory note reflected these same terms, with a final balloon payout occurring in 2018. *Id.*

The Clines wanted to defer initial installment payments to them and allow the Trust to accrue interest and to pay out at a higher interest rate. CP 15. The Clines understood they would receive additional investment growth. CP 14-15. The DST and its accompanying Promissory Note, are not, and never have been, registered as a security in Washington. *Id.*

D. Procedural History

In July 2018, Gary Cline's insurance agent made a complaint to the Department of Financial Institutions about the trust transaction. CP 21. At the conclusion of the Department's investigation, it issued a Statement of Charges alleging that: (a)

the DST arrangement constituted the offer and sale of a security; (b) Prestige and Mariani sold unregistered securities; (c) Mariani offered and sold securities without being registered as a securities salesperson or broker-dealer; and (d) administration of the Trust operated as a fraud or deceit on the Clines. CP 153–62.

Mariani, Binkele and Prestige timely appealed the charges, and the case proceeded to an administrative hearing in May 2022. CP 10-11. An Administrative Law Judge entered an Initial Order upholding the first three allegations.[1] After both parties petitioned for review[2], The Department issued a Final Order upholding the three allegations. CP 3529-45. The Department found that the DST arrangement with the Clines was an offer and sale of a security, as defined by RCW 21.20.005(14) and (17),

[1] The Initial Order did not uphold the Department's fraud allegation. CP 25. Neither party assigned error to this decision. CP 3542.

[2] The Department sought review to correct scriveners' errors in Conclusions of Law 6.12 and 6.17 and to correct Conclusion of Law 6.19, which incorrectly identified the elements necessary to prove a fraud under RCW 21.20.010(3). CP 3546.

that Prestige and Mariani offered and sold unregistered securities, and that Mariani offered and sold securities while not being registered as a securities salesperson or broker-dealer. CP 3543. The Department ordered Prestige and Mariani to pay a fine of $20,000 and pay costs, fees, and other expenses in the amount of $15,000. *Id.* at 3544.

Mariani and Prestige filed a Petition for Judicial Review. The Superior Court affirmed the Department's Final Order. Petitioners appealed to the Court of Appeals, which also affirmed the Final Order. *Michael Mariani and Prestige Management LLC v. Department of Financial Institutions*, 34 Wn.App.2d 361, 568 P.3d 689 (2025). Petitioners now seek discretionary review.

IV. ARGUMENT AGAINST REVIEW

This Court should decline Petitioners' request for discretionary review. First, the Court of Appeals' decision in this case was consistent with established precedent of this Court. To determine whether a transaction is a security, this Court has repeatedly held that Washington courts apply the test outlined in

S.E.C. v. W.J. Howey Company, 328 U.S. 293, 299 (1946). *Cellular Engineering, Ltd. V. O'Neill*, 118 Wn.2d 16, 26-27, 820 P.2d 941 (1991); *McClellan v. Sundholm*, 89 Wn.2d 527, 531, P.2d 371 (1978). The Court of Appeals faithfully applied that test to the facts of this case and properly concluded that this DST is a security.

Second, Petitioners overstate the public import of the issues in this appeal, arguing that the Court of Appeals held that all DSTs are securities and that no DSTs are exempt from registration. Petition for Review at 2. The Court of Appeals made no such sweeping generalizations and instead engaged in a fact-specific analysis to determine whether the individual *Howey* factors were met as applied to the DST mechanism at issue in this matter. The Court of Appeals did not opine on whether all DST arrangements are securities. Nor did the Court of Appeals hold that registration exemptions do not apply to all DST transactions, as Petitioners argue; instead the Court only held that no such exemption applied in this case. In short, this case would

only apply in situations having similar fact patterns. Petitioners have failed to meet the standards set forth in RAP 13.4(b), and this Court should deny review.

A. The Court of Appeals Correctly Concluded that the Lake Cavanaugh DST is a "Security"

The Court of Appeals correctly affirmed the Department's conclusion that Prestige and Mariani offered and sold a security. CP 3543. Under Washington law, a "security" is defined very broadly and includes an investment contract. RCW 21.20.005(17).

The United States Supreme Court has declared that the definition of a security in general "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Howey*, 328 U.S. at 299. In determining whether a given transaction constitutes a security under the federal statutes, "form should be disregarded for substance and the emphasis should be on

economic reality." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

In *Howey*, the United States Supreme Court articulated the relevant test for determining whether something is an investment contract, and therefore a security. In that case, W.J. Howey Company offered tracts of land containing citrus groves to the public. *Howey*, 328 U.S. at 295. Each prospective customer was offered both a land sales contract and a service contract, having been told by Howey that it was not feasible to invest in a grove unless service arrangements were made. *Id*. The service company was given full discretion and authority over the cultivation, harvest, and marketing of the groves. *Id*. at 296. The purchasers of the property generally lacked the knowledge, skill and equipment necessary for the cultivation of citrus trees. *Id*. They were attracted by the expectation of substantial profits. *Id*. The United States Supreme Court held that the parties were engaged in an investment contract, with the test being whether the scheme involves an investment of money in a common enterprise with

profits to come solely from the efforts of other. *Howey*, 328 U.S. at 301. Over the years, *Howey* has been applied by many courts to evaluate whether a given transaction constitutes a security, including courts in Washington. *S.E.C. v. Charles E. Edwards*, 540 U.S. 389, 393 (2004); *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 483 (9th Cir. 1973); *Cellular Engineering*, 118 Wn.2d at 26, (1991); *McClellan*, 89 Wn.2d at 531-32, (1978). In later cases, the last element of the test was modified to require that profits come primarily or substantially from the efforts of others—rather than "solely" from the efforts of others. *Cellular Engineering*, 118 Wn.2d at 26.

1. The DST arrangement offered by Petitioners is a "security" under the *Howey* investment contract test

Prestige and Mariani agree that *Howey* provides the applicable test, but they incorrectly apply that test to the facts of this case. Under a proper application of the test, the Court of

Appeals was correct to conclude that the DST arrangement is a security.

a. The first element is undisputed

Prestige and Mariani concede that the first element of the *Howey* test, the existence of an investment[3], has been met. Petition for Review at 9.

b. The DST was a common enterprise

The second element of the *Howey* investment contract test is whether the investment venture was a common enterprise. *McClellan*, 89 Wn.2d at 532. A common enterprise denotes a dependence by one party for his or her profit on the success of some other party in performing his or her part of the venture. *Id*. In *Howey*, the common enterprise was met because the individual land owners resided in distant locations and did not have the equipment or experience to cultivate, harvest, or market citrus products. *Howey*, 328 U.S. at 299-300. Management by a service

[3] *McClellan*, 89 Wn.2d at 532.

company was essential if the investor was to expect a return on their investment. *Id.* at 300.

Similarly, in this case, the Court of Appeals properly concluded that this element was satisfied because the Clines depended on Prestige, the trustee, to invest the proceeds of their Lake Cavanaugh property in a way that achieved their desired investment objectives. The Clines were dependent on Prestige because their general investment knowledge was somewhere between "limited" and "good." CP 1235. As the Court of Appeals recognized, all parties, including Prestige, relied on Binkele due to his 30 years of experience in the securities industry. *Mariani*, 34 Wn.App.2d at 370-71. And although the Clines were careful investors, being a careful investor often means relying on someone who knows more. *Id.* "Dependence is not negated simply by a party having a 'limited to good' understanding of investing." *Id.* Further, the Trust gave Prestige complete authority to carry out the purpose of the Trust, which was to sell the Lake Cavanaugh property and invest the proceeds.

CP 1178-85. If Prestige invests the asset in such a way that the Trust can meet its interest rate obligations, the Clines benefit by achieving their financial goals without having to dip into the asset principal. CP 13 (FOF 5.20).

Petitioners argue that there was no enterprise and even if there was, it was not a common enterprise. Petition for Review at 8-13. Petitioners' view is that the DST is merely "…an installment contract and nothing more.". *Id.* at 10. But the Court of Appeals rejected the argument that the Clines were only interested in tax-deferral. *Mariani*, 34 Wn.App.2d at 370-73. The Clines repeatedly stated that asset growth, rather than simply regular income, was a primary goal for the DST. *Id.* at 373; CP 1274. In the Risk Tolerance Questionnaire, the Clines stated that they were interested in long-term growth. *Id.*; CP 18 (FOF 5.65). Further, Gary Cline signed a declaration in which he declared that he and his wife "informed Mr. Binkele that we were interested in long-term growth of the Trust assets". CP 2094. Gary Cline testified that there were two reasons for entering into

the DST: tax deferral and the growth of the funds in the Trust. CP 2921 (lines 216:5–216:21). With the Clines interest in the growth of the Trust assets, there is naturally a dependence by the Clines on Binkele and Mariani to invest the Trust assets in a manner that would help the Clines achieve investment growth, rather than just tax-deferral.

Further, such an argument is at odds with Prestige's own marketing materials. There, Prestige states: "The [DST] has the ability to generate substantially more money over the long run than a direct and taxed sale. It is also superior to a direct installment sale as the credit risk of a defaulting buyer are eliminated." CP 517. Prestige, in its marketing materials provided to the Clines further stated the following: "The seller is desiring to have a professional staff advise and assist with any real estate or business transfer, *as well as manage and maximize the future wealth and income* for the Seller over the period of several years." CP 521 (emphasis added).

In addition, Petitioners mischaracterize what the Clines were seeking from the transaction. Petition for Review at 1, 3, 8. While the Clines did seek to defer taxes, the uncontested Findings of Fact establish that this was not their only objective. The Clines told Campbell that their understanding was that interest would accrue at eight percent and that payments from the Trust would begin in 2014 with a final "balloon payment" to occur five years later. CP 17 (FOF 5.57). Further, the Clines wanted ". . . for the Trust to accrue interest and pay out at a higher rate later". CP 15 (FOF 5.33).

Finally, the promissory note obligates the Trust to pay the asset seller. CP 12. However, if the investments perform poorly the trust could run out of money prior to making full payment to the asset seller. CP 13. If so, the asset seller would have no recourse against the trustee. *Id*. Conversely, if the Trust does well in its investments, the trustee can retain any excess over and above what it is legally obligated to pay on the promissory note. *Id*.

Both parties are aligned in wanting the investments to perform well so that the promissory note is paid in full and the Trustee can retain excess profits.

c. There was an expectation that profits will be gained from the efforts of Prestige/Mariani

The third and final element under the *Howey* investment contract test is an expectation by the investor that profits will be gained from the efforts of some other party. *McClellan*, 89 Wn.2d at 532. An investor need not expect profits solely from the efforts of others. *State v. Phillips*, 108 Wn.2d 627, 635, 741 P.2d 24 (1987). The fact that investors were required to exert some efforts if a return would be achieved does not automatically preclude a finding of an investment contract. *Glenn W. Turner Enterprises, Inc.*, 474 F.2d at 482. The efforts of the other must be "the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *Id.*

The Court of Appeals properly concluded that this element was satisfied because the Clines understood and expected that the

investment of the proceeds of the Lake Cavanaugh property sale would result in long term growth of the assets from the efforts of Prestige/Mariani. *Mariani*, 34 Wn.App.2d at 373. The Clines were interested in long-term growth and expected needing the funds in six to ten years. CP 18. The Clines' understanding was that trust assets would accrue at eight percent with periodic payments including a "balloon payment" coming their way. CP 17. The Clines understood and expected that the proceeds from the Lake Cavanaugh property were to be invested by the Trust, with the assistance of Binkele, in order to realize a long-term growth of the Trust assets. CP 2094. Draft versions of the promissory note promised the Clines an interest rate of up to eight percent a year. CP 1996. A promise of a fixed return does not preclude a scheme from being an investment contract. *Charles E. Edwards*, 540 U.S. at 389; *see also State v. Argo*, 81 Wn. App. 552, 562, 915 P.2d 1103 (1996) (under Washington law, a fixed interest rate does not preclude a finding of interdependence of fortunes). As the Court of Appeals

stated, the promised eight percent interest would result from the undeniably significant efforts of Binkele and Prestige in recommending and making appropriate investments. *Mariani*, 34 Wn.App.2d at 372-73.

B. Substantial Evidence Supports the Finding That Prestige and Mariani Offered a Security

The Court of Appeals properly rejected Petitioners' argument that they had no role in offering the DST to the Clines. Petition for Review, p. 18. As the Court explained, because attorney Todd Campbell "acted in his capacity as Prestige's attorney in offering the Clines the DST, substantial evidence supports the finding that Prestige and Mariani offered a security." *Id*. at 376.

The record establishes that Campbell was involved in dozens of emails with both the Clines and Binkele leading up to the formation of the Trust. CP 2144, 2207–14, 2241-56. Campbell gave the Clines a Disclosure and Waiver of Conflict of Interest, which made it clear that he was working on behalf of Prestige. *Id.*, CP 2203–06. In that document, Campbell stated he

would work with the Clines to sell certain assets to the Trust, to be established by Prestige. CP 2203. Campbell further made clear that "I will be representing Prestige in this transaction as I have represented them in similar transactions over the years . . ." *Id.* As the Court of Appeals pointed out, this disclosure discussed potential adversarial interests between the Clines and clients of "ours", referencing Campbell and Prestige as one entity. *Mariani*, 34 Wn.App.2d at 376. The Court was correct to conclude that as one entity, any action that Campbell took, he took on behalf of Prestige. *Id.*

The marketing materials also demonstrate how the DST was offered to the Clines. Campbell provided a DST Power Point slide printout to the Clines. CP 3655-77. Prestige is prominently displayed on the first page of the slideshow. *Id.* at 3657. Mariani is introduced as one of the principals of Prestige. *Id.* at 3660. The slideshow states: "[t]he ("Seller") can enter into an arrangement with a Prestige Investment Management, LLC ("Prestige") for complete transactional closing, wealth management, and other

benefits." *Id.* at 3663. Prestige is displayed as overseeing the DST. *Id.* at 3664. Indeed, Prestige is displayed as the entity overseeing the entire DST transaction. CP at 3664–67.

Prestige and Mariani, through their attorney, marketed the DST to the Clines, set up the Lake Cavanaugh Trust, facilitated the transfer of the Lake Cavanaugh property to third party buyers, transferred the proceeds to the Trust, and then invested those proceeds on the recommendations of Binkele. Substantial evidence supports that Petitioners played a substantial role in the sale/offer of the DST.

Petitioners argue that the Court of Appeals failed to consider and apply the "substantial contributive" test outlined in *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 130, 744 P.2d 1032 (1987). As in *Hines,* Petitioners further claim that their actions closely parallel the actions of Perkins Coie. *Hines v. DataLine Systems*, 114 Wn.2d 127, 149-50, 787 P.2d 8 (1990). But the Court of Appeals reviewed the contributions from Prestige and gave

significant weight to the Department's interpretation that the sale of a security involves people who are involved in completing paperwork to set up the DST. *Mariani*, 34 Wn.App.2d at 377-78. The Court of Appeals was correct to hold that there is "ample evidence" of Petitioner's involvement here, given they "were involved in the original marketing efforts, the negotiation of the DST, and the execution of the documents.". *Id.* at 378. Under these circumstances, Petitioners did play a substantial role in the offer and sale of the security.

Further, in *Haberman* v. *Hines*, this Court was interpreting a party's liability under RCW 21.20.430, the civil liability portion of the Securities Act. RCW 21.20.430 has no application to this matter, which was brought pursuant to the Department's regulatory powers under RCW 21.20.390. The "substantial contributive" test discussed in *Haberman* v. *Hines* does not apply here.

C. No Exemption For Registration Exists

Petitioners argue that this Court should grant review because the Court of Appeals held that no deferred sales trust qualifies for a registration exemption. Petition for Review, p. 15. Again, Petitioners overstate the impact of the Court of Appeals decision. In fact, the Court of Appeals made no such holding. Rather, the Court looked only at this DST arrangement, specifically stating it was not analyzing the impact on a "variety of other financial entities". *Mariani*, 34 Wn.App.2d at 379. The Court of Appeals concluded that the DST arrangement offered to the Clines does not qualify for either the isolated transaction exemption or the private offering exemption, where the only available evidence established that Petitioners were involved many such transactions. The Court's conclusions were correct and do not warrant further review by this Court.

1. The DST was not an isolated transaction.

To qualify for the isolated transaction exemption under RCW 21.20.320(1) and WAC 460-44A-050(1)(d), Petitioners must establish that their sale of a security "is one of not more

than three such transactions inside or outside this state during the prior twenty-four months." WAC 460-44A-050(1)(d) They cannot do so. Mariani testified that Prestige served as a trustee in roughly one hundred DSTs. CP 3244 (lines 8:1-3). Campbell estimated he has been involved in thousands of DST transactions. CP 12. Binkele estimated he had been involved with between 400 and 500 DSTs. CP 16. Aside from the Lake Cavanaugh Trust, Binkele and Prestige participated in 11 DST transactions between August 2011 and August 2013. CP 1679. While there may be some differences between the DSTs that Binkele and Petitioners were involved with and Lake Cavanaugh DST as Petitioners argue, it is still the Petitioners burden to establish exactly how these DSTs materially differed from the Lake Cavanaugh DST. *See* RCW 21.20.540. Petitioners have failed to bring forth any evidence of such differences and as a result, the Court of Appeals was correct to hold that Prestige failed to bring forth any evidence that the DST is an isolated transaction. *Mariani*, 34 Wn.App.2d at 379-80.

2. The DST is not a private offering

Similarly, the DST does not qualify for exemption as a private offering under RCW 21.20.320(1). The issuer has the burden to proof that the private offering exemption applies. RCW 21.20.540; *S.E.C. v. Ralston Purina Co*., 346 U.S. 119, 125 (1953). Under the Washington State Securities Act, the private offering exemption is interpreted in a manner consistent with the corresponding exemption found in federal securities law. WAC 460-44A-050(2); *see also* 15 U.S.C. § 77(d)(a)(2) and SEC Release No. 33-4552 (November 6, 1962).[4]

The focus of the inquiry regarding whether a transaction is deemed private is on the need of the offerees for the protections afforded by registration. *Ralston*, 346 U.S. at 125. A public offering need not be open to the world. *Id.* at 123. Courts should be mindful of the aim of the federal Securities Act, to "protect investors by promoting full disclosure of information thought

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[4] SEC Release No. 33-4552 (November 6, 1962), https://www.sec.gov/rules/1962/11/nonpublic-offering-exemption, (last visited August 14, 2025).

necessary to informed investment decisions." *Id*. at 124-25. Thus, the application of the exemption "should turn on whether the particular class of persons affected need the protection of the Act." *Id.* at 125. "An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.'" *Id.* Petitioners argue that the Court of Appeals left its analysis unfinished by looking only at the sophistication of the Clines. But the Court of Appeals was correct to point out the misunderstanding the Clines had with regard to the DST. *Mariani*, 34 Wn.App.2d at 379-80. Indeed, when Gary Cline sought to withdraw money, Mariani told him that "[y]ou are apparently missing something very basic about this transaction that I have tried to explain over and over again. We cannot follow your instructions. . . . You cannot control the funds". *Id*. at 374. Petitioners cite to *S.E.C. v. Murphy*, 626 F.2d 633 (9th Cir. 1980), but fail to put forth any evidence that the other factors discussed in *Murphy* applied to this case. Petitioners have not met their burden.

In this case, the Clines had investment knowledge characterized as somewhere between limited and good. CP 18. All of the parties the Clines interacted with—Mariani, Prestige, Binkele and Campbell—had prior experience offering or operating DSTs to other investors. CP 12, 16, 1679, 3244 (lines 8:1-3). Registration of securities seeks to ensure that an investor receives all material information concerning the offering prior to making his or her investment decision. *See* WAC 460-16A-125. Petitioners have not demonstrated that the Clines had access to critical, material information about the investment, including whether Prestige and Binkele have historically managed or advised other DSTs in a manner that enable the trusts to make all of the scheduled payments under the notes. The DST was offered to anyone in the public at large; the Clines needed the protections that the registration requirement would have afforded them.

V. CONCLUSION

Petitioners have failed to show that there is a conflict between decisions of this Court or that there is an issue of

substantial public interest that should be determined by this Court under RAP 13.4(b). The Department respectfully requests that this Court deny discretionary review.

This document contains 4973 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 5th day of September 2025.

NICHOLAS W. BROWN
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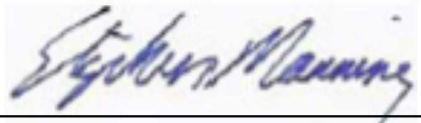

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PROOF OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on September 5, 2025, I served a true and correct copy of the *Answer for Petition for Review* for delivery on all parties or their counsel of record on the date below as follows:

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