

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL No. 28; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

Case No. 16-2-18527-4 SEA

**INTERVENOR-DEFENDANTS'  
MOTION TO DISMISS FOR LACK  
OF STANDING, PURSUANT TO  
CR 12(b)(1)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

<b>Clause</b>	<b>Page</b>
I. <b>FACTS</b> .....	2
A.    Organized Labor .....	2
B.    General-Purpose Advocacy Organizations .....	3
II. <b>ARGUMENT</b> .....	5
A.    The Organizations Do Not Have Standing In A Personal Capacity .....	5
1.    The organizational plaintiffs fail to allege an “injury in fact.” .....	6
a.    The organizational plaintiffs suffer no “particularized injury.” .....	6
b.    Striking down the Charter Public Schools Act will not redress the organizational plaintiffs’ alleged generalized injuries.....	8
2.    The organizational plaintiffs fail to assert interests within the relevant zone of interests .....	8
B.    The Organizational Plaintiffs Do Not Have Standing In A Representative Capacity .....	11
III. <b>CONCLUSION</b> .....	15

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Am. Legion Post #149 v. Wash. State Dep't of Health,*  
164 Wn.2d 570, 192 P.3d 306 (2008).....5, 6, 9, 11

*City of Seattle v. State,*  
103 Wn.2d 663, 694 P.2d 641 (1985).....6

*Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake,*  
150 Wn.2d 791, 83 P.3d 419 (2004).....5

*Knight v. City of Yelm,*  
173 Wn.2d 325, 267 P.3d 973 (2011).....1

*League of Women Voters v. State,*  
184 Wn.2d 393, 355 P.3d 1131 (2015).....1, 2

*Lee v. State,*  
185 Wn.2d 608, 374 P.3d 157 (2016).....11

*Save a Valuable Env't (SAVE) v. City of Bothell,*  
89 Wn.2d 862, 576 P.2d 401 (1978).....8

*To-Ro Trade Shows v. Collins,*  
144 Wn.2d 403, 27 P.3d 1149 (2001).....9, 10

*Trepanier v. City of Everett,*  
64 Wn.App. 380, 824 P.2d 524 (1992).....7

*Wright v. Colville Tribal Enter. Corp.,*  
159 Wn.2d 108, 147 P.3d 1275 (2006).....2

**Statutes**

Charter Public Schools Act..... *passim*

Charter Public Schools Act § 102-105.....10

Charter Public Schools Act § 117.....10

**Other Authorities**

Second Amendment.....4

TABLE OF CONTENTS

(continued)

Clause

Page

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

American Heritage College Dictionary (3d ed. 2000) .....2

El Centro de la Raza, *Missions, Values, Outcomes*,  
<http://www.elcentrodelaraza.org/about-us/mission-values-outcomes/> (last  
visited Aug. 15, 2016).....4

Greenpeace, *About*, <http://www.greenpeace.org/usa/about/> (last visited Aug. 19,  
2016) .....4

IAM District 751, <http://www.iam751.org/> (last visited Aug. 16, 2016) .....13

NRA, *About the NRA*, <https://home.nra.org/about-the-nra/> (last visited Aug. 19,  
2016) .....4

Operating Engineers 609, *About Local 609*, [http://www.iuoelocal609.org/about-  
local-609.html](http://www.iuoelocal609.org/about-local-609.html) (last visited Aug. 17, 2016) .....12

*Our Mission and Vision*, <http://www.aflcio.org/About/Our-Mission-and-Vision>  
(last visited Aug. 19, 2016).....2

Philip A. Talmadge, *Understanding the Limits of Power: Judicial Restraint in  
General Jurisdiction Court Systems*, 22 Seattle U. L. Rev. 695 (1999) .....1

State, County and Municipal Employees, *About AFSCME*,  
<http://www.afscme.org/union/about> (last visited Aug. 17, 2016).....13, 14

United Food and Commercial Workers Union, *Who We Are – UFCW*,  
<http://www.ufcw21.org/who-we-are/> (last visited Aug. 17, 2016).....13

Washington Association of School Administrators, <http://www.wasa-oly.org/> (last  
visited Aug. 15, 2016).....3

Washington Association of School Administrators, <http://www.wasa-oly.org/> (last  
visited Aug. 17, 2016).....12

9. Washington Education Ass’n, *History*,  
<https://www.washingtonea.org/union/history/> (last visited Aug. 17, 2016) .....12

Washington Education Association, *History*,  
<https://www.washingtonea.org/union/history/> (last visited Aug. 11, 2016) .....3

Washington State Labor Council, *Services*, <http://www.wslc.org/services/> (last  
visited Aug. 17, 2016).....14

Women Voters, *About Us*, [http://www.lwwva.org/about\\_us.html](http://www.lwwva.org/about_us.html) (last visited Aug.  
17, 2016) .....5

1 Four organizations and four individuals served as plaintiffs in *League of Women Voters*  
2 *v. State*, 184 Wn.2d 393, 355 P.3d 1131 (2015). The same plaintiffs appear in this latest  
3 attempt to shutter charter public schools. But this time, seven more labor organizations and  
4 their affiliates have joined the effort. Essentially, unions and general purpose lobbying groups  
5 comprise that entire lot. On the other side of the case are the State, here to defend its own law,  
6 and 20 intervenor-defendants, a mixed group of charter public school students and parents;  
7 charter public schools themselves; a charter public school management organization; and a  
8 statewide nonprofit organization that helps charter public schools open and thrive. How we got  
9 to court this way, where organizations with no legal interest in the Charter Public Schools Act  
10 sued to strike that law, while those most directly affected by the law had to intervene as  
11 defendants, should give the Court pause.

12 Standing is as much a doctrine about judicial restraint as it is a part of a court's  
13 jurisdiction. Compare Philip A. Talmadge, *Understanding the Limits of Power: Judicial*  
14 *Restraint in General Jurisdiction Court Systems*, 22 Seattle U. L. Rev. 695 (1999) with *Knight*  
15 *v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011) ("Standing is jurisdictional.").  
16 Standing, then, is a legal threshold that ensures that the right plaintiff (the "injured" party)  
17 brings to the court a justiciable dispute for it to resolve. Neither condition has been met in this  
18 case.

19 Here, the organizational plaintiffs lack standing in a personal capacity, because they fail  
20 to allege any "injury in fact" (they cannot), and they fail to assert interests within the relevant  
21 "zone of interests." Further, the organizational plaintiffs lack standing in a representational  
22 capacity, because the interests that each organization seeks to protect are not germane to the  
23 organization's purpose. A review of each organization's core purpose confirms this and refutes  
24 its "me too" allegations regarding its putative interests in a case concerning a statute that has  
25  
26  
27  
28

1 nothing to do with the organization’s actual purpose.<sup>1</sup> The Court should grant this 12(b)(1)  
2 motion and dismiss the organizational plaintiffs.

3 **I. FACTS**

4 Three-quarters of the plaintiffs (11 of 15) in this case are special interest organizations.  
5 Over three-quarters of those organizations (9 of 11) are labor organizations or their affiliates.  
6 The other two are general purpose advocacy organizations. None of the plaintiff organizations  
7 is a charter public school, a nonprofit organization that aids charter public schools, or is  
8 otherwise regulated or even necessarily affected by the Charter Public Schools Act.

9 **A. Organized Labor**

10 At its simplest, a labor union is “[a]n organization of wage earners formed for the  
11 purpose of serving the members’ interests with respect to wages and working conditions.” The  
12 American Heritage College Dictionary, at 757 (3d ed. 2000) (defining “labor union”).  
13 Individual labor unions coalesce into larger groups, labor councils or labor federations, for  
14 example. *See* American Federation of Labor and Congress of Industrial Organizations (“AFL-  
15 CIO”), *Our Mission and Vision*, <http://www.aflcio.org/About/Our-Mission-and-Vision> (last  
16 visited Aug. 19, 2016). Organized labor has a narrow, work-focused purpose, which is perhaps  
17 best captured by the AFL-CIO’s Mission and Vision: “Work is what we do to better ourselves,  
18 to build dreams and to support our families. But work is more than that. Work cures, creates,  
19 builds, innovates and shapes the future. Work connects us all.” *Id.*

20 Two labor-related organizations from *League of Women Voters* also appear in this case:  
21 the Washington Education Association (“WEA”) and the Washington Association of School  
22 Administrators (“WASA”). The Complaint alleges that WEA is a Washington nonprofit  
23 corporation that represents, in part, “state public school teachers and other staff members . . . .”

---

24 <sup>1</sup> “A challenge to subject matter jurisdiction under CR 12(b)(1) may be either facial or factual.” *Wright v. Colville*  
25 *Tribal Enter. Corp.*, 159 Wn.2d 108, 119, 147 P.3d 1275 (2006). With a facial challenge to subject matter  
26 jurisdiction, a court must assume well-pled factual allegations are true, similar to the standard applied under CR  
27 12(b)(6). *Id.* With a factual challenge, however, a court may consider evidence outside the pleadings, and the  
28 plaintiff must present “competent proof of jurisdictional facts.” *Id.* at 120. In essence, the latter challenge becomes  
a summary judgment motion as to subject matter jurisdiction only. Unlike a summary judgment motion, however, a  
factual challenge to subject matter jurisdiction gives a trial court discretion “to evaluate for itself the merits of  
jurisdictional claims and . . . order an evidentiary hearing for that purpose.” *Id.*

1 Compl. ¶ 9. The WEA is “the largest representative of public school employees in the state.”  
2 Washington Education Association, *History*, <https://www.washingtonea.org/union/history/> (last  
3 visited Aug. 11, 2016). The Complaint alleges that WASA “is an organization open to all  
4 professional school administrators” and is “committed to leadership in providing equity and  
5 excellence in student learning; developing competent, ethical, and visionary educational  
6 leaders; and promoting community and legislative support for education.” Compl. ¶ 8. WASA  
7 is largely a training, networking, and policy organizing group for school administrators.  
8 Washington Association of School Administrators, <http://www.wasa-oly.org/> (last visited Aug.  
9 15, 2016).

10 Now, in addition to WEA and WASA, the Complaint includes seven labor organizations  
11 and their affiliates. Five collectively represent workers’ interests from a wide variety of  
12 industry sectors: (1) groundskeepers and security officers (International Union of Operating  
13 Engineers 609); (2) machinists and aerospace workers from Boeing (International Association  
14 of Machinists and Aerospace Workers); (3) grocery, retail, and healthcare workers (United  
15 Food and Commercial Workers Union); (4) Washington state, county, and municipal employees  
16 (Washington Federation of State Employees); and (5) community and technical college  
17 employees (American Federation of Teachers Washington). Compl. ¶¶ 13-14, 16-18. Two are  
18 labor coalitions that support local unions. *Id.* ¶¶ 15, 19.

19 Despite the highly varied industry sectors they represent—none of which is related to  
20 education or children’s interests in education—all of the labor-related organizational plaintiffs  
21 allege that the Charter Public Schools Act harms them and their members *identically*—“by  
22 diverting already deficient funds away from the common school system” and “by undermining  
23 collective bargaining through improperly adopted restrictions on collective bargaining and  
24 bargaining units.” Compl. ¶¶ 8-9, 13-19.

25 **B. General-Purpose Advocacy Organizations**

26 Advocacy groups tend to focus on one issue, whether it is Greenpeace’s “peaceful  
27 protest[s] and creative communication[s] to expose global environmental problems,”

1 Greenpeace, *About*, <http://www.greenpeace.org/usa/about/> (last visited Aug. 19, 2016), or the  
2 National Rifle Association’s posturing as “America’s foremost defender of Second Amendment  
3 rights . . . .” NRA, *About the NRA*, <https://home.nra.org/about-the-nra/> (last visited Aug. 19,  
4 2016). However, some advocacy groups apparently have no sharply defined mission or central  
5 purpose. Rather, these groups enumerate social, political, and economic topics of many types as  
6 part of a broad call for grassroots organizing. By their own descriptions, El Centro de la Raza  
7 (“El Centro”) and the League of Women Voters fall into this latter category.

8 Here, El Centro asserts that it “seeks to ensure that every child in the state is offered an  
9 equal and adequate education,” and the Charter Public Schools Act allegedly harms El Centro  
10 and its members, because “the law unconstitutionally spends state funds that are restricted to  
11 benefit the State’s common schools and creates separate educational systems that provide  
12 unequal educations, rather than strengthening the existing public school system.” Compl. ¶ 6. El  
13 Centro describes itself as “The Center for People of All Races” and notes broadly that its mission  
14 is “to build unity across all racial and economic sectors, to organize, empower, and defend our  
15 most vulnerable and marginalized populations and to bring justice, dignity, equality, and  
16 freedom to all the peoples of the world.” El Centro de la Raza, *Missions, Values, Outcomes*,  
17 <http://www.elcentrodelaraza.org/about-us/mission-values-outcomes/> (last visited Aug. 15, 2016).  
18 As laudable as El Centro’s longstanding work in the community is, only a handful of the 29  
19 “Outcomes” that El Centro de la Raza strives to achieve even remotely involve public schools;  
20 others involve topics as wide-ranging as food, housing, and job security and access to medical,  
21 legal, and financial services. *See id.*

22 The League of Women Voters (the “League”) alleges that it is a nonprofit organization  
23 that “encourages informed and active participation of citizens in government and influences  
24 public policy through education and advocacy,” and that the Charter Public Schools Act harms  
25 the organization and its members, because the law is unconstitutional and it “deprives [the  
26 organization and its members] of their right to elect representatives to oversee the spending of  
27 their taxes on public education.” Compl. ¶ 7. “The League seeks to prevent the further



1 expenditure of taxpayer money to implement” the Charter Public Schools Act. Compl. ¶ 7.  
2 According to its website, the League is an “action group.” League of Women Voters, *About Us*,  
3 [http://www.lwvwa.org/about\\_us.html](http://www.lwvwa.org/about_us.html) (last visited Aug. 17, 2016). For the League, “Action”  
4 includes “building public opinion.” *Id.* “Action methods” include “lobbying.” *Id.*

## 5 II. ARGUMENT

6 The organizational plaintiffs do not have standing in either a personal or representational  
7 capacity,<sup>2</sup> and therefore should be dismissed from this suit.

8 First, the organizational plaintiffs lack standing in a personal capacity, because: (1) the  
9 organizational plaintiffs cannot identify a particularized injury to themselves; (2) the remedies  
10 requested will not redress the generalized harms they allege concerning funding for education or  
11 an allegedly improper legislative amendment process; and (3) their asserted interests in  
12 constitutional funding for non-charter schools and a general and uniform public school system  
13 are not within the zone of interests regulated by the Charter Public Schools Act.

14 Second, the organizational plaintiffs lack standing in a representational capacity, because  
15 the interests that the organizational plaintiffs seek to protect are not germane to their respective  
16 purposes. Rather, the interests the organizational plaintiffs claim to protect in this suit are  
17 tailored for this suit’s purposes and bear little resemblance to the organizations’ actual missions.

### 18 A. The Organizations Do Not Have Standing In A Personal Capacity

19 An organization can have standing in a personal capacity. *Am. Legion Post #149 v.*  
20 *Wash. State Dep’t of Health*, 164 Wn.2d 570, 595, 192 P.3d 306 (2008). Generally, a two-part  
21 test determines whether a plaintiff has standing, which applies to all “persons.” A plaintiff must:  
22 (1) suffer from an injury in fact, economic or otherwise; and (2) assert an interest that is arguably

---

23  
24 <sup>2</sup> The Complaint also alleges that plaintiffs have standing “because this matter is of serious public importance,  
25 immediately affects substantial segments of the population, and its outcome will have a direct bearing on education,  
26 commerce, finance, labor, or industry generally.” Compl. ¶ 28. The “public importance” relaxation of standing  
27 applies “only in cases where the plaintiff whose standing was challenged was the *only* plaintiff in the case and the  
28 liberal approach was necessary to ensure that the important public issues raised did not escape review.” *Grant Cty.*  
*Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004). Because Intervenor-  
Defendants do not challenge the individual plaintiffs’ standing, the issues will not escape review once threshold  
issues are finally determined, and the “public importance” relaxation of standing does not apply here.

1 within the “zone of interests to be protected or regulated by the statute [or constitutional  
2 guaranty] in question.” *Id.* at 593-94 (citation omitted).

3 As an initial matter, the organizational plaintiffs do not allege standing in a personal  
4 capacity. Rather than alleging standing in a personal capacity, the Complaint suggests the  
5 opposite, i.e., that the organizational plaintiffs claim only representational standing: “The  
6 individual Plaintiffs are *and the organizational Plaintiffs’ members include* taxpayers.” Compl.  
7 ¶ 23 (emphasis added).

8 But even if the organizational plaintiffs alleged standing in a personal capacity—which  
9 they do not—they would still fail the applicable test for two main reasons. First, the  
10 organizational plaintiffs cannot show an “injury in fact.” Specifically, they do not even allege  
11 that, as organizations, they have suffered a particularized injury; instead, they allege that their  
12 highly generalized interests in an educated populace or workforce will be harmed by inadequate  
13 funding of public education in Washington, even though this alleged harm, if accepted for the  
14 sake of argument, will not be redressed by striking down the Charter Public Schools Act.  
15 Second, the organizational plaintiffs fail to assert interests that are arguably within the relevant  
16 zone of interests.

17 **1. The organizational plaintiffs fail to allege an “injury in fact.”**

18 An “injury in fact” requires “(a) a particularized injury (b) concretely and demonstrably  
19 resulting from defendants’ action (c) which injury will be redressed by the remedy sought.” *City*  
20 *of Seattle v. State*, 103 Wn.2d 663, 681, 694 P.2d 641 (1985).

21 **a. The organizational plaintiffs suffer no “particularized injury.”**

22 Here, the organizational plaintiffs allege no “particularized injury,” and for purposes of  
23 this motion, cannot show one. Rather, every labor-related organizational plaintiff alleges the  
24 same *generalized* injuries—i.e., they claim that the Charter Public Schools Act somehow harms  
25 them “by diverting already deficient funds away from the common school system” and “by  
26 undermining collective bargaining through improperly adopted restrictions on collective  
27 bargaining and bargaining units.” Compl. ¶¶ 8-9, 13-19. But a “particularized injury” requires  
28

1 “specific[] and perceptibl[e]” harm, *Trepanier v. City of Everett*, 64 Wn.App. 380, 382-83, 824  
2 P.2d 524 (1992), as opposed to a conjectural or hypothetical one. As in *Trepanier*, the  
3 organizational plaintiffs here assume too much about the effects of a government action. *Id.* (no  
4 “particularized injury” was alleged where the plaintiff assumed that reducing property densities  
5 would result in reduced development). Specifically, the organizational plaintiffs here assume too  
6 much about the effects of the Charter Public Schools Act’s funding provisions and describe a  
7 generalized problem about legislative process that affects them in the same way it affects anyone  
8 else. Plaintiffs characterize an alleged defective legislative amendment process as if the issue  
9 were one of substantive importance to collective bargaining laws. Compl. ¶¶ 106-119, 8-9, 13-  
10 19 (alleging harm “by undermining collective bargaining through *improperly adopted*  
11 restrictions on collective bargaining and bargaining units.”) (emphasis added). The collective  
12 bargaining interests involved in the Charter Public Schools Act have nothing to do with the  
13 collective bargaining interests of any of the plaintiffs—they are not charter public school  
14 employees, charter public schools, or charter public school organizations. But again, the alleged  
15 harm here is generalized; it’s about legislative process. Plaintiffs strain to present it as a non-  
16 generalized, substantive harm.

17 The general purpose advocacy organizations, in addition to alleging an education-funding  
18 injury similar to that alleged by the labor-related organizations, allege harms that are even more  
19 generalized in nature. El Centro alleges that the Charter Public Schools Act “creates separate  
20 educational systems that provide unequal educations, rather than strengthening the existing  
21 public school system.” *Id.* ¶ 6. The League alleges that the law “deprives [the organization and  
22 its members] of their right to elect representatives to oversee the spending of their taxes on  
23 public education”<sup>3</sup> because the law is unconstitutional. *Id.* ¶ 7. El Centro simply assumes its  
24 conclusions that charter schools, through the Charter Public Schools Act, provide unequal  
25 educations and weaken the existing public school system. By no standard is this a  
26 “particularized injury” to El Centro, assuming it’s an injury at all. It is instead a hypothetical

27 \_\_\_\_\_  
28 <sup>3</sup> Nothing else in the Complaint alleges how the Charter Public Schools Act takes away any election rights.

1 injury that only the Legislature can redress, as is the League’s hypothetical injury to its ability to  
2 elect representatives to oversee the spending of its members’ taxes.

3 **b. Striking down the Charter Public Schools Act will not redress**  
4 **the organizational plaintiffs’ alleged generalized injuries.**

5 The organizational plaintiffs allege generalized injuries, including (1) that funding charter  
6 schools takes money away from non-charter schools in an unconstitutional way and (2) that the  
7 Charter Public Schools Act undermines collective bargaining through “improperly adopted”  
8 restrictions. Striking the Charter Public Schools Act will not redress these generalized, alleged  
9 injuries, and so the third factor of the “injury in fact” requirement for standing in a personal  
10 capacity is not satisfied by the organizational plaintiffs.

11 Public spending on charter public schools does not throw state money into a black hole.  
12 Rather, this public funding provides basic education (and more) to charter public school students;  
13 plaintiffs admit as much. Compl. ¶¶ 39-40. Plaintiffs do not like this type of public school and  
14 want to close all of them, but their preference says nothing of the State’s underfunding of public  
15 schools generally; in any case, that underfunding is already the subject of a separate inquiry and  
16 ongoing Supreme Court supervision in *McCleary v. State*. Striking down the Charter Public  
17 Schools Act will not solve that funding problem. Similarly, even assuming an alleged harm as  
18 generalized as a defective legislative amendment process were somehow particularized here,  
19 striking the law enacted would not fix the process, it would only strike the law. In both cases,  
20 the organizational plaintiffs fail to show how the remedies they seek would redress the  
21 generalized harms they allege.

22 **2. The organizational plaintiffs fail to assert interests within the relevant**  
23 **zone of interests.**

24 A second main requirement for standing in a personal capacity is for an organization to  
25 assert an interest arguably within the zone of interests “protected or regulated by the statute or  
26 constitutional guarantee in question.” *Save a Valuable Env’t (SAVE) v. City of Bothell*, 89  
27 Wn.2d 862, 866, 576 P.2d 401 (1978). “[I]n question” refers to the statutory or constitutional  
28

1 object of a legal action. Because the organizational plaintiffs are challenging the  
2 constitutionality of the Charter Public Schools Act, it is *the Act* that is “in question” for purposes  
3 of the zone-of-interests test for standing, not the constitutional provisions that the Act allegedly  
4 violates. *Compare To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 414, 27 P.3d 1149 (2001)  
5 *with id.* at 423 (Sanders, J., dissenting); *American Legion*, 164 Wn.2d at 593-94.

6 Plaintiffs allege that they meet the zone-of-interests test for standing thusly:

7 Plaintiffs seek to protect the interests relating to the education of children across  
8 the state and, in particular, their judicially enforceable right to have the State  
9 amply provide them with an education and establish a general and uniform system  
10 of public schools. These interests are within the zone of interests regulated by the  
11 Charter School Act and protected by the provisions of the Constitution violated by  
12 this law.

11 Compl. ¶ 26.

12 The organizational plaintiffs’ claim, i.e., that they satisfy the zone-of-interests test for  
13 standing in part because they seek to protect interests that are within the scope of certain  
14 constitutional protections, is misplaced. Because they challenge the constitutionality of the  
15 Charter Public Schools Act, the organizational plaintiffs must seek to protect interests affected  
16 by the regulatory scope of the purportedly unconstitutional Charter Public Schools Act in order  
17 to satisfy the zone-of-interests test. *Compare To-Ro*, 144 Wn.2d at 414 *with id.* at 423 (Sanders,  
18 J., dissenting); *American Legion*, 164 Wn.2d at 593-94. When a plaintiff pits a statute against  
19 the state constitution, as the organizations do in this case, the protective scope of specific  
20 constitutional provisions that the Charter Public Schools Act purportedly violates are irrelevant  
21 for purposes of the zone-of-interests test for determining standing.<sup>4</sup> Because plaintiffs allege that  
22 their harm flows from an illegal statute, under *To-Ro* and *American Legion*, the court must  
23 examine the challenged statute’s regulatory scope to determine whether the organizational  
24 plaintiffs pass the zone-of-interests test—not the scope of state constitutional guarantees that  
25

---

26 <sup>4</sup> Even if the specific constitutional provisions cited in the Complaint were relevant for determining standing here,  
27 plaintiffs allege that they meet standing’s zone-of-interests requirement by asserting rights or protections under  
28 Articles II, III, and IX of the State constitution. But these are rights or protections of children and parents on the one  
hand and almost any citizen of the State on the other, not unions and lobbying groups.

1 plaintiffs claim are affected by the statute. *To-Ro*, 144 Wn.2d at 414 (holding that the  
2 declaratory relief the plaintiff sought—i.e., a licensing statute was unconstitutional—  
3 “plainly . . . lies outside the zone of interests regulated by” the statute); *id.* at 423-24 (disagreeing  
4 with the majority and opining that only a “constitutional guarantee” need be affected) (Sanders,  
5 J., dissenting).

6 Generally, the Charter Public Schools Act regulates (1) the establishment, management,  
7 operation, and performance evaluation of charter public schools, Charter Public Schools Act  
8 §§ 102-105, 117; (2) their authorizers’ and boards’ responsibilities, *id.* §§ 108-113; and (3) their  
9 contracting processes, fulfillment, and renewal decisions, *id.* §§ 114-122. Plaintiffs cannot  
10 credibly claim interests that fall within this regulatory scope, because none of them is a charter  
11 public school organization that is regulated by the Act. Indeed, the organizational plaintiffs do  
12 not assert any interests within the Charter Public Schools Act’s regulatory scope. While the  
13 Charter Public Schools Act provides ways for charter public schools to receive public funds from  
14 the State General Fund, *id.* §§ 127, 128, the organizational plaintiffs assert interests related to  
15 public funds that the Charter Public Schools Act does not regulate. And, the Charter Public  
16 Schools Act’s provisions that relate to superintendent supervision over charter public schools, *id.*  
17 § 107, and collective bargaining for charter public schools, *id.* § 137, relate to interests that have  
18 nothing to do with the organizational plaintiffs’ interests. The Charter Public Schools Act does  
19 not change superintendent supervision over non-charter public schools. The Charter Public  
20 Schools Act does not change collective bargaining for anyone except charter public schools and  
21 their employees. Those interests are not for these plaintiffs to assert.

22 The organizational plaintiffs cannot show an injury in fact or interests that are arguably  
23 within the relevant zone of interests for determining standing; the organizational plaintiffs fail on  
24 both and thus lack standing in a personal capacity.

1                   **B.     The Organizational Plaintiffs Do Not Have Standing In A**  
2                   **Representative Capacity.**

3                   The organizational plaintiffs do not have standing in a representative capacity, because  
4                   the interests they seek to protect are not germane to their purposes.<sup>5</sup> For example, in *American*  
5                   *Legion*, a local chapter of the American Legion challenged a smoking ban. 164 Wn.2d at 583.  
6                   When analyzing the American Legion’s standing in a representational capacity, the Supreme  
7                   Court recognized the organization for what it was— “a corporation established by federal statute,  
8                   for the purposes of upholding and defending the constitution,” and other purposes relating to  
9                   veterans. *Id.* at 596 (internal citation omitted). And the “primary purpose[s]” of local Post #149  
10                  were “to provide services and benefits to veterans and their families [and] to unite its  
11                  membership in the bonds of fraternity, benevolence, and charity.” *Id.* (internal quotation marks  
12                  omitted). The Supreme Court concluded, then, that “[s]moking is not germane to any of the  
13                  American Legion’s or local Post’s purposes.” *Id.*

14                  Here, the labor-related organizational plaintiffs all seek to protect claimed interests in  
15                  underfunded public education and allegedly improperly adopted restrictions on collective  
16                  bargaining.<sup>6</sup> But just as the local chapter in *American Legion* strained to connect its interests in  
17                  smoking to its purposes—i.e., “smoking is germane to the Post’s purpose of providing a social  
18                  center for veterans and their families” *id.*—the labor-related organizations here seek to protect  
19                  interests that are not germane to their core purposes. It is more appropriate to factually examine  
20                  the labor-related organizations’ purposes in order to assess germaneness than it is to simply wave  
21                  in any union in Washington which claims an interest in how the State structures and funds its  
22                  public education system.

---

23                  <sup>5</sup> As an initial matter, while the Supreme Court has recognized taxpayer standing in suits involving challenges to a  
24                  law’s constitutionality, *see Lee v. State*, 185 Wn.2d 608, 614-15, 374 P.3d 157 (2016), it has not gone so far as to  
25                  adopt a type of taxpayer organizational standing that gives the organization standing merely because its members are  
26                  taxpayers. Here, the organizational plaintiffs try to bootstrap themselves into this case using their membership’s  
27                  alleged taxpayer status. That is not the law, and if it was, there would effectively be no limiting principle for  
28                  determining an organization’s standing in a representational capacity; any organization with a taxpayer member  
                        would always have standing.

<sup>6</sup> The Charter Public Schools Act does not eliminate collective bargaining at charter schools. Rather, the law  
                        localizes collective bargaining.

1 For the labor-related organizations that represent education workers, their focus is on  
2 securing their members' positions on wages, working conditions, or general professional  
3 solidarity. It cannot be that simply pointing to their members' involvement in education  
4 automatically shows that their purposes are germane to the interests they purport to protect here.  
5 WEA admits that its mission is "to advance the professional interests of its members" as "the  
6 largest representative of public school employees in the state," and then tacks on the phrase "in  
7 order to make public education the best it can be for students, staff, and communities." Compl.  
8 ¶ 9. Washington Education Ass'n, *History*, <https://www.washingtonea.org/union/history/> (last  
9 visited Aug. 17, 2016).<sup>7</sup>

10 WASA trains school administrator members and provides networking and policy  
11 organizing opportunities for them. Washington Association of School Administrators,  
12 <http://www.wasa-oly.org/> (last visited Aug. 17, 2016). WASA does not, however, even purport  
13 to have as its purpose anything to do with school system structure or educational choice.<sup>8</sup>

14 The other labor-related organizations' purposes are even further afield from the interests  
15 they seek to protect in this case. The Boeing union claims that it "has a strong interest in  
16 ensuring a well-educated workforce in Washington." Compl. ¶ 14. But it is clear from that  
17 union's own website, for example, that the International Ass'n of Machinists and Aerospace  
18 Workers, AFL-CIO District 751 ("IAM") is, at its core, an organizing and collective bargaining  
19 entity whose purpose is to protect its members' interests in wages and work conditions, just as  
20  
21

---

22 <sup>7</sup> The International Union of Operating Engineers 609 (Compl. ¶ 13) has a similar germaneness problem as WEA,  
23 except that it claims that it "is the oldest and largest union local representing only classified (non-teaching)  
24 employees of K-12 public schools in Washington State." International Union of Operating Engineers 609, *About*  
25 *Local 609*, <http://www.iuolocal609.org/about-local-609.html> (last visited Aug. 17, 2016). And the same problem  
applies to the American Federation of Teachers Washington (Compl. ¶ 18), which organizes "faculty and  
professional staff from community and technical colleges and classified employees from pre-K through 12  
institutions." *Id.*

26 <sup>8</sup> As becomes more apparent below, however, WASA, like the other organizational plaintiffs, is trying to bootstrap  
27 itself into this case. For example, WASA *now* touts that it has adopted "several goals" including one to "hold the  
28 Legislature accountable for delivering on the State's 'paramount duty' to provide ample funding for all K-12  
children . . . ." Compl. ¶ 8.



1 with other traditional labor unions.<sup>9</sup> IAM District 751, <http://www.iam751.org/> (last visited Aug.  
2 16, 2016).

3 The same problem arises with other labor-related organizations, like the Boeing union,  
4 that in reality represent workers of specific industry sectors with no interest (other than simply  
5 saying so in the Complaint) in education in Washington State, let alone its funding and one type  
6 of school’s bargaining unit structure.

- 7 • The United Food and Commercial Workers Union (Compl. ¶ 16), the Complaint  
8 alleges, is “the largest private-sector union in Washington with over 44,000  
9 members working in grocery store retail health care and other industry jobs” and  
10 has as its main goals (1) building stronger union membership where it already has  
11 a presence; (2) organiz[ing] workplaces that are not yet organized; and  
12 “[m]ak[ing] sure that the voice of workers is heard in the halls of government and  
13 on the campaign trail.” United Food and Commercial Workers Union, *Who We*  
14 *Are – UFCW*, <http://www.ufcw21.org/who-we-are/> (last visited Aug. 17, 2016).  
15 None of these purposes is germane to the interests that this union purports to  
16 protect in this case.
- 17 • The Washington Federation of State Employees (Compl. ¶ 17) is the Washington  
18 branch of the American Federation of State, County and Municipal Employees,  
19 i.e., “the nation’s largest and fastest growing public services employees union  
20 with more than 1.6 million working and retired members.” American Federation  
21 of State, County and Municipal Employees, *About AFSCME*,  
22 <http://www.afscme.org/union/about> (last visited Aug. 17, 2016). This public  
23 sector union’s purpose is to unionize public servants of all stripes, including  
24

---

25 <sup>9</sup> Plaintiffs try to shoehorn these interests into the case by asserting an interest in “improperly adopted” restrictions  
26 on collective bargaining. First, regardless of whether changes to state collective bargaining law were properly  
27 adopted, none of the restrictions applies to any of the labor-related organizational plaintiffs here; they apply only to  
28 charter schools and their employees. Second, the labor-related organizational plaintiffs unpersuasively claim an  
interest in proper legislative amendment process. Compl. ¶¶ 106-119. Proper legislative amendment process is just  
as much a concern of any other individual or group as it is of organized labor; that does not mean that it is  
*germane*—the applicable test—to the purposes of the labor-related organizational plaintiffs.

1 “nurses, corrections officers, child care providers, EMTs, sanitation workers and  
2 more.” *Id.* Nowhere does it state that its purpose is to speak for public education  
3 funding or the legislative amendment process generally.

- 4 • Even more attenuated are the standing claims of those labor-related organizations  
5 whose purposes are purely to assist labor unions in accomplishing organized  
6 labor’s goals. The Washington State Labor Council (Compl. ¶ 15), on a meta-  
7 level, does not organize workers into unions, it “organizes unions” and believes  
8 that “[b]y joining together, union organizations affiliated with the [Washington  
9 State Labor Council] can speak with one strong voice” in the state capital.  
10 Washington State Labor Council, *Services*, <http://www.wslc.org/services/> (last  
11 visited Aug. 17, 2016).
- 12 • Similarly, the Teamsters Joint Council No. 28 “empowers and supports local  
13 unions and their members,” except it does so across the Pacific Northwest and  
14 into Alaska, not just in Washington. Compl. ¶ 19. Nowhere does the Complaint  
15 attempt to tie this organization’s purpose to the interests it seeks to protect, at  
16 least not in earnest—the Teamsters Joint Council No. 28 represents public school  
17 bus drivers, the Complaint alleges. *Id.*

18 Finally, organizations with as broad a mission as the League and as numerous a list of  
19 goals as El Centro cannot use their generalized interests to satisfy the germaneness requirement.  
20 To hold otherwise would render the germaneness requirement meaningless. Where a group’s  
21 mission broadly includes ensuring that the Legislature passes constitutional laws, such as the  
22 League’s mission does, then any such group can meet the germaneness requirement when it loses  
23 in the Legislature and wants a second shot in the courtroom. Nothing in Washington law  
24 supports such a broad interpretation of the germaneness requirement, and this Court should not  
25 expand it.

1 **III. CONCLUSION**

2 For the doctrine of standing to mean anything, organizational plaintiffs must present real  
3 injuries to specific interests covered by the law being challenged, and represent interests that are  
4 germane to their purposes. The organizational plaintiffs fail on all counts—they lack standing in  
5 their personal and representational capacities. Intervenor-Defendants respectfully ask the Court  
6 to dismiss the organizational plaintiffs.

7 Dated: August 23, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

8  
9 By: s/Robert M. McKenna

10 Robert M. McKenna (WSBA No. 18327)  
rmckenna@orrick.com

11 701 Fifth Avenue  
12 Suite 5600  
13 Seattle, Washington 98104-7097  
14 Telephone: +1-206-839-4300  
15 Facsimile: +1-206-839-4301

16 *Attorney for Intervenor-Defendants*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL No. 28; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

Case No. 16-2-18527-4 SEA

**[PROPOSED] ORDER GRANTING  
INTERVENOR-DEFENDANTS'  
MOTION TO DISMISS FOR LACK  
OF STANDING, PURSUANT TO  
CR 12(b)(1)**

[PROPOSED] ORDER GRANTING  
INTERVENOR-DEFENDANTS' MOTION  
TO DISMISS FOR LACK OF STANDING,  
PURSUANT TO CR 12(b)(1)  
16-2018527-4 SEA

ORRICK, HERRINGTON & SUTCLIFFE LLP  
701 Fifth Avenue, Suite 5600  
Seattle, Washington 98104-7097  
+1-206-839-4300

1 After consideration of the papers on file and good cause appearing therefore, Intervenor-  
2 Defendants' Motion to Dismiss for Lack of Standing, pursuant to CR 12(b)(1) is **GRANTED**.

3 **IT IS ORDERED.**

4 DATED this \_\_\_\_ day of \_\_\_\_\_.

5  
6  
7  
8 \_\_\_\_\_  
9 THE HONORABLE JOHN H. CHUN

10  
11  
12  
13 *Presented By:*

14  
15 ORRICK, HERRINGTON & SUTCLIFFE LLP

16  
17 By: 

18 Robert M. McKenna (WSBA No. 18327)  
rmckenna@orrick.com

19 701 Fifth Avenue  
20 Suite 5600  
Seattle, Washington 98104-7097  
21 Telephone: +1-206-839-4300  
Facsimile: +1-206-839-4301

22 *Attorney for Intervenors*  
23  
24  
25  
26

27 [PROPOSED] ORDER GRANTING  
28 INTERVENOR-DEFENDANTS' MOTION  
TO DISMISS FOR LACK OF STANDING,  
PURSUANT TO CR 12(B)(1)  
16-2018527-4 SEA

- 2 -

ORRICK, HERRINGTON & SUTCLIFFE LLP  
701 Fifth Avenue, Suite 5600  
Seattle, Washington 98104-7097  
+1-206-839-4300