

WASHINGTON STATE SUPREME COURT

John Worthington,

Petitioner,

vs.

Washington State Legislature et al,

Respondents,

No. 101,567-4

MOTION ON THE MERITS

1. Identify of Moving Party

John Worthington respectfully asks for the relief designated in Part 2.

2. Statement of Relief Sought

Worthington respectfully request this court grant immediate reversal on the merits pursuant to RAP 18.14. (e) (2).

3. Facts Relevant to Motion

On December 24, 2022, Worthington filed a Petition for Review alleging amongst other things that 11 members of the Washington State Legislature were not asked for records. In the

January 26, 2023, response to the Petition for Review, the Legislature conceded that 11 members of the Washington State Legislature were never asked for responsive public record.

Worthington checked the General Orders of the Washington State supreme Court and did not find any references to the Motions on the Merits or RAP 18.14.

4. Grounds for Relief and Argument

RAP 18.14 reads in relevant part:

(b) Time. A party may submit a motion on the merits to affirm any time after the opening brief has been filed. A party may submit a motion on the merits to reverse any time after the respondent's brief has been filed.

The Respondent filed its brief on January 26, 2023.

RAP 18.14. (e) (2) reads:

(2) Motion To Reverse. A motion on the merits to reverse will be granted in whole or in part if the appeal or any part thereof is determined to be clearly with merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and clearly not supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly an abuse of discretion.

The Petition for Review alleged that 11 members of the Washington State Legislature were never asked for any records¹.

In the response to the Petition for Review, the Legislature did not deny that allegation. Therefore, without asking 11 members of the Washington State Legislature for records, the Legislature has no way of knowing whether any records were destroyed.

It is well settled law that affidavits were required from these 11 members of the Washington State Legislature.²The allegations that all the records were destroyed are not supported by the evidence and it was a clear abuse of discretion for any court to rule that responsive records were destroyed without at least checking with the 11 members of the Legislature who were not asked for responsive records or affidavits.

¹ CP 478, CP 481. Worthington argued 7 but listed 11 members. The list was limited to Legislative aides, but some legislators were not asked for records.

² *Nissen v. Pierce Cnty.* 183 Wash. 2d 863 (Wash. 2015)

It is also well settled that a party abandons an issue by failing to brief the Issue. See *Yakima County v. Eastern Washington Growth Management Hearings Bd.*, 146 Wn. App. 679, 698, 192 P.3d 12 (2008) ("A party abandons an issue by failing to brief the Issue," ellipsis added), *Olson v. Silverling*, 52 Wn. App. 221, 230, 758 P.2d 991 (1988) (citing *Wilson v. Steinbach*, 98 Wn.2d 434,440,656 P.2d 1030 (1982) and RAP 2.5 (a) and 9.12). See also *Adams v. Dept. of Labor & Indus.*, 128 Wn.2d 224, 228-229, 905 P.2d 1220 (1995).

Here, the Legislature has abandoned the issue of whether 11 members of the Washington State Legislature were never asked for any public records. That issue is now conceded.

Rule 18.8 and rule 1.2 allows a waiver of the court rules to promote the ends of Justice and facilitate a ruling on the merits. The Rules of Appellate were designed to allow flexibility so as to avoid harsh results. *Weeks v. Chief of Wash. State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982).

It serves the interests of justice to the PRA to reverse and

remand this case.

Respectfully Submitted this 26th day of January 2023.



By:


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CERTIFICATE OF SERVICE

The undersigned hereby certifies this brief complies with RAP 18.17 (c) (19) with 634 words, and, that on this 26TH day of January 26, 2023, he served this Motion on the Merits via the eFiling Portal for the Washington State Appellate

Courts:

Executed this 26th day of January, 2023.

By: 

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JOHN WORTHINGTON - FILING PRO SE

January 26, 2023 - 4:58 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,567-4
Appellate Court Case Title: John Worthington v. Washington State Legislature, et al.
Superior Court Case Number: 20-2-02488-8

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