

**SUPREME COURT OF THE STATE OF WASHINGTON**

RICKEY FIEVEZ, individually,  
KYLE FIEVEZ, individually, and  
TYLER FIEVEZ, individually,

Petitioners,

v.

STATE OF WASHINGTON  
DEPARTMENT OF  
CORRECTIONS,

Respondent.

RESPONDENT'S  
REPLY IN  
SUPPORT OF  
MOTION TO  
STRIKE PORTIONS  
OF PETITIONERS'  
ANSWER TO  
*AMICUS*  
MEMORANDUM

This Court should grant Respondent State of Washington Department of Corrections' (DOC) motion to strike those portions of Petitioners/Plaintiffs' Answer to the Amicus Memorandum of Julie A. Kays that inappropriately reply to DOC's Answer to the Petition for Review. *See* Plaintiffs' Answer to Amicus at 5 & n.2, 8-12. This Court should also require Plaintiffs to file a corrected answer to the amicus memorandum that does not include these inappropriate arguments.

Contrary to Plaintiffs' contentions, *see* Resp. at 1-2, DOC does not argue that Plaintiffs cannot reference DOC's arguments in its answer to the amicus memorandum. Indeed, DOC has not moved to strike all references to its answer to the petition for review from Plaintiffs' answer to the amicus memorandum. Rather, DOC moves to strike *only* those arguments made by Plaintiffs in strict reply to DOC's answer to the petition for review that are untethered from their argument in response to the amicus memorandum. For that reason, DOC did *not* move to strike Plaintiffs' following arguments that both reference DOC's answer to the petition and also respond to the amicus memorandum:

- At page 1, arguing: "The Kays *amicus* memorandum does an excellent job of highlighting why this is a Supreme Court case and debunking the argument advanced in the Department of Corrections ('DOC') answer to the petition for review that the ample causation evidence presented below was merely 'speculative.'"

- At pages 11-12, arguing: “As evidenced throughout the DOC answer with its *repeated* assertion that any evidence offered by Fievez is ‘speculative,’ and as noted in the Kays memorandum at 10-11, DOC falls back on the old, tired cliché that any expert testimony contrary to its factual narrative is ‘speculative.’”
- At page 13, arguing: “The Kays memorandum at 8-9 also effectively addresses why the legal causation principles raised by DOC in its answer at 26-27 as an afterthought do not apply.”

In addition, DOC is not asking this Court to apply a one-sided standard to Plaintiffs’ answer to the amicus memorandum. *See Resp.* at 3. DOC acknowledges that its answer to the amicus memorandum references the petition for review, but each of those references is *also* connected to an argument responding to the amicus memorandum. *See DOC’s Answer to Amicus* at 1-2, 7 & n.1, 9. As such, DOC has appropriately made arguments

under RAP 13.4(h) in “answer thereto” the amicus memorandum.

Plaintiffs, on the other hand, have not. Nor have Plaintiffs submitted a statement of additional authorities under RAP 10.8 in support of their petition for review, making that rule inapplicable here contrary to Plaintiffs’ argument. *See* Resp. at 3. Accordingly, the arguments made by Plaintiffs in strict reply to DOC’s answer to the petition for review are inappropriate, unnecessary, and not permitted under the rules when DOC raised no new issues in its answer to the petition for review. *See also* RAP 13.4(d) (“A party may file a reply to an answer *only if* the answering party seeks review of issues not raised in the petition for review.” (Emphasis added.)).

This Court should order the reply arguments identified in DOC’s motion stricken, *see* Plaintiffs’ Answer to Amicus at 5 & n.2, 8-12, and require Plaintiffs to submit a corrected answer to the amicus memorandum that omits this improper material.

This reply contains 540 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 5th day of July 2023.

ROBERT W. FERGUSON

Attorney General

*s/ Sara Cassidey*

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**CERTIFICATE OF SERVICE**

I certify that on the date below I electronically filed the RESPONDENT’S REPLY IN SUPPORT OF MOTION TO STRIKE PORTIONS OF PETITIONERS’ ANSWER TO *AMICUS* MEMORANDUM with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5th day of July 2023, at Olympia, Washington.

*s/ Beverly Cox* \_\_\_\_\_  
BEVERLY COX  
Paralegal

**ATTORNEY GENERAL'S OFFICE, TORTS DIVISION**

**July 05, 2023 - 3:21 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
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**Comments:**

Respondent s Reply In Support Of Motion To Strike Portions Of Petitioners Answer To Amicus Memorandum

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