

FILED
SUPREME COURT
STATE OF WASHINGTON
6/20/2023 3:20 PM
BY ERIN L. LENNON
CLERK

NO. 101924-6

SUPREME COURT
OF THE STATE OF WASHINGTON

TONY VARNEY, et al.,

Petitioners,

v.

CITY OF TACOMA

Respondents.

ANSWER TO MOTION TO STRIKE THE ANSWER TO
PETITION FOR REVIEW

WILLIAM C. FOSBRE, City Attorney
WSB# 27825
Attorney for Respondents
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, Washington 98402
(253) 591-5885

Answer

On April 21, 2023, the Petitioners sought discretionary review of a decision of the Court of Appeals in this Court. By Public Letter dated April 21, 2023, the Supreme Court Clerk's Office accepted the petition and specifically informed the parties that "[t]he request for review will be treated as a petition for review" under RAP 13.4 and RAP 12.3(a). The Supreme Court Clerk's Office further ordered the parties "to review the provisions set forth in RAP 13.4(d) regarding the filing of any answer to a petition for review and any reply to an answer. The petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i)." The Respondent (City of Tacoma) voluntarily filed an answer to this petition for discretionary review as directed under RAP 13.4.

Petitioners, without authority under RAP 13.4 filed a reply to the Respondent's answer. RAP 13.4(d) only allows a reply if the answering party seeks review of an issue not raised in the

petition for review. In their reply, Petitioners **did** not allege the Respondent was raising any new issues for this Court to consider.

In the Public Letter **dated** June 2, 2023, the Supreme Clerk correctly **moved** to strike the Petitioner's Reply as being filed without authority. The Petitioner then **filed** a reply to the Supreme Court Clerk's motion to strike on June 9, 2023. The Supreme Court Clerk's Office in a June 9, 2023, Public Letter to the parties **indicated** that it will treat Petitioner's reply "as a motion to strike the answer to the petition for review."

The written **decision** of the Court of Appeals **terminated** review in that Court. The petition before this Court is properly **categorized** as a petition for review under RAP 13.4.

The Clerk's Office **directed** the parties to use RAP 13.4. The Respondent **abided** by this **directive** and **focused** its answer on the facts, statutes and **caselaw** accordingly.

This Court **decides** what rule it will use to **determine** when to exercise **discretion**, not the parties. The Petitioner is the one who has **argued** and **cited** to the wrong rule.

Conclusion

The Respondent's Answer followed the direction of the Supreme Court Clerk's Office. The Respondent's Answer will assist this Court in deciding whether to use its discretion and should not be stricken.

Pursuant to RAP 18.7(c)(11), the undersigned hereby certifies that this brief was prepared using Times New Roman 14-point typeface, and contains 439 words, excluding those elements excluded by the rule from the word count. This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepared the document.

DATED this 20th day of June, 2023.

By: /s/ William C. Fosbre
WILLIAM C. FOSBRE,
WSBA #27825
City Attorney
Attorney for Respondent City of
Tacoma

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on June 20, 2023, I filed with the Supreme Court of Washington and delivered through the Court's portal a copy of the foregoing Answer to Motion to Strike the Answer to Petition for Review this Certificate of Service by email pursuant to agreement to the following:

Attorney for Petitioners

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Dated this June 20, 2023, at Tacoma, Washington

/s/Gisel Castro

Gisel Castro

APPENDIX

THE SUPREME COURT

STATE OF WASHINGTON

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

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April 25, 2023

LETTER SENT BY E-MAIL ONLY

Matthew G. Johnson
Ronald Gene Meyers
Tim Jeffrey Friedman
Ron Meyers & Associates PLLC
8765 Tallon Lane NE, Suite A
Lacey, WA 98516-6654

Hon. Derek Byrne, Clerk
Court of Appeals, Division II
909 A Street, Suite 200
Tacoma, WA 98402

Kimberly Jeane Cox
City of Tacoma - Office of the City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-5629

Re: Supreme Court No. 101924-6 - Tony Varney, et al. v. City of Tacoma
Court of Appeals No. 56174-3-II (consolidated with No. 56187-5-II)

Clerk and Counsel:

The Petitioner filed with this Court the “PETITIONER’S MOTION FOR DISCRETIONARY REVIEW” in the referenced matter on April 21, 2023. The request for review will be treated as a petition for review.¹ The \$200 filing fee (check #21351) has also been received. The matter has been assigned the Supreme Court case number indicated above.

The parties are directed to review the provisions set forth in RAP 13.4(d) regarding the filing of any answer to a petition for review and any reply to an answer.

The petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i). If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

Usually there is approximately three to four months between receipt of the petition for review in this Court and consideration of the petition. This amount of time is built into the

¹ See RAP 13.4(a) and RAP 12.3(a).

process to allow an answer to the petition and for the Court's normal screening process. At this time it is not known on what date the matter will be determined by the Court. The parties will be advised when the Court makes a decision on the petition.

Any amicus curiae memorandum in support of or in opposition to a pending petition for review should be served and received by this Court and counsel of record for the parties and other amicus curiae by 60 days from the date the petition for review was filed; see RAP 13.4(h).

Counsel are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.

Sincerely,



Erin L. Lennon
Supreme Court Clerk

ELL:jm

THE SUPREME COURT

STATE OF WASHINGTON

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY



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June 2, 2023

LETTER SENT BY E-MAIL ONLY

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Kimberly Jeane Cox
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Re: Supreme Court No. 101924-6 - Tony Varney, et al. v. City of Tacoma
Court of Appeals No. 56174-3-II

Counsel:

On June 2, 2023, the Court received the “PETITIONERS’ REPLY TO CITY OF TACOMA’S ANSWER TO PLAINTIFFS’ MOTION FOR DISCRETIONARY REVIEW.”

The Rules of Appellate Procedure only allow for the filing of a reply to an answer “if the answering party seeks review of issues not raised in the petition for review.” See RAP 13.4(d). Any such reply “should be limited to addressing only the new issues raised in the answer.” See RAP 13.4(d).

In this case, it does not appear that the answer seeks review of issues not raised in the petition for review. Therefore, the reply does not appear to be permitted under the rules.

Accordingly, a clerk’s motion to strike the reply will be set for consideration without oral argument by a Department of the Court at the same time that the Court considers the pending petition for review. Any answer to the motion to strike the reply should be served and filed by **June 9, 2023**.

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No. 101924-6
June 2, 2023

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah R. Pendleton". The signature is fluid and cursive, with the first name "Sarah" being the most prominent.

Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:bw

THE SUPREME COURT
STATE OF WASHINGTON

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
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June 9, 2023

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Re: Supreme Court No. 101924-6 - Tony Varney, et al. v. City of Tacoma
Court of Appeals No. 56174-3-II (consolidated with No. 56187-5-II)

Counsel:

On June 9, 2023, this Court received the "PETITIONERS' REPLY TO CLERK'S MOTION TO STRIKE REPLY" which will be treated as a motion to strike the answer to the petition for review.

Counsel for Respondent may serve and file an answer to the motion to strike by **June 23, 2023**. Any reply to any answer should be served and filed by **June 30, 2023**.

The motion to strike will be set for consideration without oral argument at the same time as the Court considers the pending petition for review.

Sincerely,

Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:jm

TACOMA CITY ATTORNEYS OFFICE

June 20, 2023 - 3:20 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,924-6
Appellate Court Case Title: Tony Varney, et al. v. City of Tacoma
Superior Court Case Number: 19-2-04316-0

The following documents have been uploaded:

- 1019246_Answer_Reply_20230620151703SC976413_9126.pdf
This File Contains:
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Comments:

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