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SUPREME COURT OF THE STATE OF WASHINGTON

ADORA SVITAK, a minor child, by and through her guardian, JOYCE SVITAK; TALLYN LORD, a minor child, by and through his guardians, JUSTIN LORD and SARA WETSTONE; HARPER LORD, a minor child, by and through his guardians, JUSTIN LORD and SARA WETSTONE; ANNA IGLITZIN, a minor child, by and through her guardians, DMITRI IGLITZIN and EILEEN QUIGLEY; JACOB IGLITZIN, a minor child, by and through his guardians, DMITRI IGLITZIN and EILEEN QUIGLEY; COLIN SACKETT, a minor child, by and through his guardians, BJ CUMMINGS and TOM SACKETT,

Plaintiffs/Petitioners,

v.

STATE OF WASHINGTON; CHRISTINE GREGOIRE, in her official capacity as Governor of Washington State; TED STURDEVANT, in his official capacity as Director of the Department of Ecology; PETER GOLDMARK, in his official capacity as Commissioner of Public Lands; PHIL ANDERSON, in his official capacity as Director of the Department of Fish & Wildlife,

Defendants/Respondents.

**STATE'S ANSWER TO LAW PROFESSORS'
AMICI CURIAE BRIEF**

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I. INTRODUCTION

Washington's public trust doctrine is not the broad and amorphous concept proposed by amici curiae law professors (Amici). Washington's public trust doctrine finds its roots in the state's constitution and case law. The doctrine restricts the State from alienating the public's interest in navigation and activities closely related to navigation, such as fishing and swimming. Amici's arguments are not persuasive because they offer no discussion of Washington's Constitution, and the only Washington case they cite does not even mention the public trust doctrine. Amici provide no support for overturning the dismissal of Plaintiffs' lawsuit.¹

II. ARGUMENT

A. The Scope Of Washington's Public Trust Doctrine Is Established By Washington Law

Amici suggest that Washington's public trust doctrine: (1) requires affirmative action by the State to protect the air and the atmosphere, and (2) applies to the air and the atmosphere. Amicus Curiae Memorandum in Support of Petitioners (Amici Br.) at 1. Amici base their view of the public trust doctrine on a general argument that the doctrine is an

¹ Amici refer to a Declaration of Dr. James Hansen submitted in support of the petition for direct review as providing the "scientific prescription for greenhouse gas reduction . . ." Amicus Curiae Memorandum in Support of Petitioners (Amici Br.) at 1-2. However, the Supreme Court Commissioner has ruled that Dr. Hansen's declaration may not be considered in the merits briefing in this appeal (i.e., factual allegations must come from the superior court record). See Ruling Denying Motion to Strike at 2 (May 31, 2012).

“attribute of sovereignty,” and they also analogize the doctrine to state police powers. Amici Br. at 2–7. Amici fail to recognize a fundamental point—despite whatever Roman or English common law roots it may have, the public trust doctrine as it exists today is defined and established by state law. *PPL Montana, LLC v. Montana*, __ U. S. __, 132 S. Ct. 1215, 1235, 182 L. Ed. 2d 77 (2012). Amici advance a view of the doctrine wholly unsupported by legal authority when they discuss “the public trust doctrine” as if it exists independent from a specific state’s constitution, statutes, or case law. Furthermore, case decisions from other states provide no persuasive authority because they analyze other states’ constitutions and statutes, which have no bearing on the development of the public trust doctrine in Washington.

Amici point to no provision in Washington’s Constitution, statutes, or case law to support their contention that Washington’s public trust doctrine applies to the air and the atmosphere. Washington’s Supreme Court has applied the doctrine only to navigable waters and the lands beneath them. *See, e.g., Caminiti v. Boyle*, 107 Wn.2d 662, 668–70, 732 P.2d 989 (1987); *see also* State’s Resp. Br. at 12-16. Amici likewise point to no language in the state constitution, statutes, or case law mandating the State to take any *affirmative actions* regarding public trust resources. *Caminiti* characterized the doctrine as *prohibiting* the State from

alienating trust resources unless the public's interests are served. State's Resp. Br. at 18–21. Similarly, the state constitution imposes a *restraint* on the Legislature's ability to alienate navigable waters located in designated harbor areas and the waters in front of harbor areas. Const. art. XV, § 1. But no provision in article XV imposes affirmative duties on the State to protect harbor area waters from degradation. *See* Const. art. XV, §§ 1–2; State's Resp. Br. at 10–11. Because Amici fail to cite our state constitution or case law, their assertions about the meaning of the doctrine are not persuasive in this case.

B. The Public Trust Doctrine Does Not Impose Restrictions On The State Legislature Beyond Those Provided In The State Constitution

By characterizing the public trust doctrine as an “attribute of sovereignty,” Amici appear to argue that the doctrine exists outside of the state constitution, and that it imposes a duty on each of the states independent of each state's constitution, statutes, or case law. Amici Br. at 4–5 (characterizing the trust as a limitation on sovereignty). This argument fails for three reasons. First, the three United States Supreme Court cases cited by Amici do not support the claim that the public trust doctrine inheres in each state's sovereignty. Second, given the plenary authority of the Legislature, courts will not direct the Legislature to act absent a constitutional mandate. Third, the public trust doctrine is not

analogous to general police powers, which are an inherent attribute of sovereignty.

1. The Supreme Court Cases Cited By Amici Do Not Support Their Claims

Illinois Central R.R. Co. v. Illinois: The decision in *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 13 S. Ct. 110, 36 L. Ed. 1018 (1892), does not support Amici’s assertion that the public trust doctrine inheres in every state’s sovereign status. Rather than articulating a principle of law controlling against all states, *Illinois Central* relied on Illinois state law to reach its holding. See *Appleby v. City of New York*, 271 U.S. 364, 395, 46 S. Ct. 569, 70 L. Ed. 992 (1926) (stating that the conclusion reached in *Illinois Central* “was necessarily a statement of Illinois law”); *PPL Montana*, 132 S. Ct. at 1235 (stating “the public trust doctrine remains a matter of state law” and characterizing *Illinois Central* as relying on Illinois law) (citing *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261, 285, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997)). *Illinois Central*, therefore, imparts no meaning about the scope of the public trust doctrine as it has been embodied in the Washington Constitution and Washington case law.

Even if *Illinois Central* were relevant to the scope of the public trust doctrine in Washington, no language in *Illinois Central* imposes an

affirmative duty on the state to take actions to protect the trust from degradation. Amici combine and conflate portions of text taken from different pages of the opinion to claim that the Court “recognized that the trust doctrine imposed governmental duties as well as governmental authority.” Amici Br. at 5 (using an ellipsis to combine language from pages 453 and 460 of *Illinois Central* into a single quote). When read in context, the Court’s clear meaning was simply that the legislature could not completely *alienate* its control over the navigable waters of an *entire harbor* by conveying title in the submerged lands under the harbor to the railroad. *See, e.g., Illinois Central*, 146 U.S. at 453 (“The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, *cannot be relinquished by a transfer of the property.*”); at 454 (“So with trusts connected with public property, or property of a special character, like lands under navigable waters, they *cannot be placed entirely beyond the direction and control of the state.*”); and at 460 (“The legislature *could not give away nor sell the discretion of its successors* in respect to matters, the government of which, from the very nature of things, must vary with varying circumstances.”) (emphasis added in all three quotes).² No

² One must read the entire *Illinois Central* opinion in context to fully comprehend the meaning of individual phrases stating that Illinois could never alienate its control over navigable waters. The Court held only that complete control of a large area

language in *Illinois Central* supports the claim that the public trust doctrine imposes an *affirmative duty* on states to take steps to protect trust resources from degradation.

Geer v. Connecticut: In *Geer v. Connecticut*, 161 U.S. 519, 16 S. Ct. 600, 40 L. Ed. 793 (1896), *overruled by Hughes v. Oklahoma*, 441 U.S. 322, 326, 99 S. Ct. 1727, 60 L. Ed. 2d 250 (1979), the Court examined the validity of a Connecticut statute prohibiting the killing of woodcocks, ruffed grouses, or quails within the state with the intent to transport the birds outside of the state. The legal issue before the Court was whether the statute violated the interstate commerce clause of the United States Constitution. *Geer*, 161 U.S. at 522. The Court analyzed the basis of the state’s ability to regulate game resources and, turning to Roman law, held that the state has “undoubted authority to control the taking and use of that which belonged to no one in particular, but was common to all.” *Id.* at 523. The Court concluded that the power of the state, “resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people”

could not be alienated, and recognized that smaller portions of navigable lands *could be alienated* if the public’s interests are served thereby. *Illinois Central*, 146 U.S. at 452. The Court held that the aquatic lands previously filled and built upon by the railroad may in fact serve the public’s interests, and remanded for further fact-finding over whether the railroad’s improvements extended so far out into the harbor as to impair the public’s navigational rights. *Id.* at 464. After remand and subsequent appeal, the Court unanimously held the railroad retained title and possession to all of its improvements, none of which were found to interfere with navigation. *Illinois ex rel. Hunt v. Illinois Central R.R. Co.*, 184 U.S. 77, 98–99, 22 S. Ct. 300, 46 L. Ed. 440 (1902).

Id. at 529. The Court determined that the state’s property-based interest in managing game within its boundaries overcame the commerce clause challenge.

Geer does not support Amici’s claim that the public trust doctrine inheres in every state’s sovereignty. *Geer* never once used the phrase “public trust doctrine,” and the decision never cites *Illinois Central*, which had been decided just four years earlier. The Court could not have been referring to or relying on the unique limit on Illinois’ authority to alienate navigational resources described in *Illinois Central*, because the Court described Connecticut’s power over game as being exercised “*like all other powers of government*, as a trust for the benefit of the people” *Geer*, 161 U.S. at 529 (emphasis added). This phrasing demonstrates the Court’s view that a state’s authority over game is no different than a state’s police powers, which are exercised for the benefit of all citizens.³

Geer’s passing reference to a “trust,” without any further explanation suggesting what that “trust” means, provides further evidence that the Court did not intend to silently invoke Connecticut’s public trust doctrine. The Court’s vague and unexplained reference to a “trust” provides no guidance about the scope of Connecticut’s public trust

³ In fact, *Geer* later held that even if the state’s authority to regulate game was not based on its proprietary authority to manage the common resource, an “equally conclusive” analysis rested on the state’s police power, which must also be exercised for the public good. *Geer*, 161 U.S. at 534–35.

doctrine, and it does not offer persuasive authority for interpreting Washington's public trust doctrine.

Furthermore, *Geer* was overruled in 1979, when the Court determined that *Geer* inappropriately relied upon a fiction of a state "owning" game as the representative of the people to avoid an interstate commerce clause challenge. *Hughes*, 441 U.S. at 327. While *Hughes* did not intend to "leave the States powerless to protect and conserve wild animal life within their borders[.]" no language in the *Hughes* majority advances Amici's characterization of states' sovereign trust responsibilities, let alone trust obligations under the public trust doctrine. *Id.* at 338.

Geer does not support Amici's argument that Connecticut's public trust doctrine inheres in that state's sovereignty. The case lends no support to the assertion that the doctrine imposes an affirmative duty on a particular state to protect natural resources from degradation.

PPL Montana, LLC v. Montana: Amici are correct that *PPL Montana* references the "ancient origin" of the public trust doctrine. Amici Br. at 3. But the Court nonetheless holds that the development and implementation of the public trust doctrine "remains a matter of state law" *PPL Montana*, 132 S. Ct. at 1235. In sharp contrast to the

equal footing doctrine,⁴ which the Court described as stemming from a United States constitutional foundation, the Court emphasized that “the contours of that public trust do not depend upon the [federal] Constitution. Under accepted principles of federalism, the States retain residual power to determine the scope of the public trust over waters within their borders” *Id.* at 1235. Given *PPL Montana*’s deference to individual states to define the scope of the public trust doctrine within each state, nothing in the opinion supports a claim that the doctrine inheres in a state’s sovereignty beyond reach of each state’s constitution. No language in *PPL Montana* supports Amici’s assertion that the doctrine imposes affirmative obligations on every sovereign state to protect trust resources from degradation.

PPL Montana’s characterization of the public trust doctrine as being determined by state law is consistent with the fact that the English public trust doctrine developed as a part of that country’s common law. It goes without saying that each state and its legislature is free to define its common law. *See Overlake Homes, Inc. v. Seattle-First Nat’l Bank*, 57 Wn.2d 881, 885, 360 P.2d 570 (1961) (holding that “it [is] well within the

⁴ The equal footing doctrine provides that new states joining the Union enter on an equal footing with the original 13 colonies. *Coyle v. Smith*, 221 U.S. 559, 567, 31 S. Ct. 688, 55 L. Ed. 853 (1911). Because the original states retained state ownership of submerged lands under navigable waters upon formation of the Union, new states receive the same ownership rights. *See, e.g., Pollard v. Hagan*, 44 U.S. (3 How.) 212, 229, 11 L. Ed. 565 (1845).

power of the legislature to change the common law,” and that the common law “ ‘may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations.’ ” (quoting *Munn v. Illinois*, 94 U.S. 113, 134, 24 L. Ed. 77 (1876)). Thus, the constitutional framers were free to reject entirely the English common law concept of riparian rights to wharf out, which they did in article XVII, section § 1 of the Washington Constitution.⁵ See *Eisenbach v. Hatfield*, 2 Wash. 236, 245, 26 P. 539 (1891) (denying waterfront owner’s claimed right to wharf out over abutting tidelands that were declared state-owned under article XVII, section 1). Similarly, the framers were free to adopt whatever portion of the English common law public trust doctrine they wished. See Const. art. XV (adopting the public trust doctrine to apply to Washington’s harbor areas).

In short, none of the three United States Supreme Court cases relied upon by Amici supports their claim that the public trust doctrine is an inherent attribute of each state’s sovereignty, as if the doctrine were not subject to definition either by a state’s constitutional framers or subsequent legislatures. Additionally, none of the three cases supports

⁵ The right to “wharf out” is a common law right of littoral (waterfront) landowners to build a dock, wharf, or another structure, out into the water to facilitate that landowner’s access to the navigable waters.

Amici's claim that the doctrine imposes an affirmative duty on states to take actions to protect trust resources from degradation.⁶

2. Under Our System Of Government, Legislative Action Cannot Be Mandated By A Common Law Doctrine

In addition to the lack of support in the cited cases, Amici's characterization of the public trust doctrine as an "attribute of sovereignty" provides no guidance to this Court in how to construe Washington's public trust doctrine. Amici do not explain the relevance of the doctrine as an alleged "attribute of sovereignty," nor do they tie that characterization back to our constitutional structure.

In Washington, "[t]he legislature represents this sovereignty of the people, except as limited by the constitution." *State v. Clark*, 30 Wash. 439, 443, 71 P. 20 (1902) (citing Wash. Const. art. I, § 1). In voting to adopt the constitution and join the Union, the people of this state conferred their sovereign authority on the Legislature, balanced by the checks instituted by the executive and judicial branches of government. The authority of the Legislature is plenary, except as limited by the constitution. *Automotive United Trades Org. (AUTO) v. State*, No. 85971-0, slip op. at 10 (Wash. Oct. 4, 2012) ("[T]he state

⁶ Amici also accuse "state governments" of sitting idle in the face of global warming, Amici Br. at 7, but that factual assertion contradicts the specific facts pled by Plaintiffs in this case. It also ignores the numerous actions Washington has taken to combat carbon dioxide emissions into the atmosphere. State's Resp. Br. at 3-5.

constitution is not a grant, but a restriction on the lawmaking power, and the power of the legislature to enact all reasonable laws is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions.’ ”) (quoting *Clark v. Dwyer*, 56 Wn.2d 425, 431, 353 P.2d 941 (1960)).

Given the plenary authority of the Legislature, courts “will not direct the Legislature to act . . . unless creation of a program and/or the funding thereof is *constitutionally mandated*.” *Pannell v. Thompson*, 91 Wn.2d 591, 599, 589 P.2d 1235 (1979) (emphasis added); *see, e.g., McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012) (enforcing an express constitutional mandate on the State to fund basic education). It is for this exact reason that the judicial relief requested by Plaintiffs violates the separation of powers doctrine, a point that Amici fail to address. State’s Resp. Br. at 27–33. Even if the public trust doctrine inheres in the State’s sovereignty, the Legislature’s authority and discretion to legislate on matters implicating the public trust doctrine is absolute unless limited or mandated by the constitution.

3. The Public Trust Doctrine Is Not Analogous To The State’s Police Power Because It Is Not A Grant Of Authority

Amici contend that their broad view of the public trust doctrine as an “attribute of sovereignty” finds support in what they maintain is an

analogous setting—state police powers. Amici Br. at 5–6. Although Amici cite no Washington cases on this point, the Court has in fact held that police powers are a fundamental aspect of government:

The police power of the state is more than an attribute of sovereignty. It, like the power of taxation, is an essential element of government, and exists in every state without express declaration and without limitation, in so far as it is made to apply to the health, peace, comfort, and morals of the people.

State ex rel. Webster v. Super. Ct. of King Cnty., 67 Wash. 37, 40, 120 P. 861 (1912). But police powers are not analogous to the public trust doctrine. As an essential element of government, police powers are the *authority* to govern, and those powers are *unlimited* unless restricted by the constitution. *CLEAN v. State*, 130 Wn.2d 782, 805, 928 P.2d 1054 (1996). In direct contrast, the public trust doctrine in Washington is viewed as a *restriction* on the actions of the State. *See, e.g., Caminiti*, 107 Wn.2d at 670. The public trust doctrine prohibits the State from alienating trust resources unless the public’s interests are served. *See State’s Resp. Br.* at 18–21.

Amici’s analogy to police powers fails for a second reason. Even if the public trust doctrine were somehow comparable to Washington’s police powers, the exercise of such powers is still within the broad discretion of the Legislature. The Washington Supreme Court has

recognized that when exercising its police power, the Legislature “is vested with a wide discretion not only to determine what the public interest requires, but also to adopt measures necessary for such protection.” *McDermott v. State*, 197 Wash. 79, 83, 84 P.2d 372 (1938). Nothing about the nature of Washington’s police powers would empower courts to override the discretion of the Legislature; thus, police powers cannot by analogy support a court-ordered requirement that the Legislature take some action regarding a public trust. Amici’s failed analogy between the public trust doctrine and police powers undercuts Amici’s claim that the doctrine imposes restrictions on the State Legislature outside the confines of constitutional language.

C. Washington State’s Public Trust Doctrine Applies Only To Navigable Waters And Underlying Lands

Relying primarily on *Illinois Central* and *Geer*, Amici claim in section II of their brief that the public trust doctrine attaches to the air and the atmosphere.⁷ This claim fails for two reasons. First, none of the cases discussed by Amici support applying Washington’s public trust doctrine to the air. Second, in contrast to several of the out-of-state cases cited by Amici, Washington’s Constitution contains no language placing

⁷ Like Plaintiffs, Amici interchangeably use “air” and “atmosphere” as if the airshed above the State of Washington and the earth’s atmosphere are one in the same. Neither Plaintiffs nor Amici offer support for such an assumption.

Washington's natural resources, including Washington's air resources, into a trust.

Illinois Central does not support expanding the public trust doctrine to the air.⁸ That case involved only the lands underlying the navigable waters of the harbor fronting the City of Chicago, the quintessential resource covered by most states' public trust doctrines. The focus of the Court's discussion hinged on the unique nature of Illinois' ownership of the lands underlying those navigable waters. *See, e.g., Illinois Central*, 146 U.S. at 452–58 (discussing the importance of the harbor to commerce and trade in the City of Chicago, citing numerous cases which all involved navigable waters, citing English common law regarding navigable waters, and quoting British Lord Hale's treatise, *De Jure Maris*⁹). In no portion of the opinion did the Court suggest that any other natural resource served the unique function provided by navigable waters of supporting commerce by facilitating the movement of people and goods.

Amici selectively choose phrases from various pages of the *Illinois Central* opinion, taken out of context, in an attempt to weave together a

⁸ This assumes, of course, that *Illinois Central* has any relevance to Washington law, which it does not. *See supra*, section II.B.1.

⁹ The full title was *De Jure Maris et Brachiorum Ejusdem* (Of the Sea, and the Arm of the Same), which essay was published in Stuart Archibald Moore, *A History of the Foreshore and the Law Relating Thereto* (Stevens & Haynes 1888).

claim that *Illinois Central*'s analysis naturally expands to the air. For example, *Illinois Central* remarked that navigable waters have a "public character," *id.* at 456, and that the harbor waters are "a subject of public concern to the whole people of the state." *Id.* at 455. But in describing the unique aspects of navigable waters, the Court was not establishing a test that could be applied to other natural resources to determine if the public trust doctrine applied to them. Amici's assertion that air possesses some of the public characteristics of navigable waters fails to make the case that air should therefore be subject to the public trust doctrine. Such a determination is for the Legislature to make, not this Court.

Geer v. Connecticut similarly fails to help Amici's argument. As established above, *Geer* had nothing to do with Connecticut's, or any other state's, public trust doctrine, so it simply cannot provide support for expanding the public trust doctrine to the air. *See supra*, section II.B.1. As a result, *Geer* does not support Amici's claim that courts have "mobilized" the public trust doctrine to protect other resources besides navigable waters, such as wildlife. Similarly, Amici's single citation to a Washington case, *Dep't of Fisheries v. Gillette*, 27 Wn. App. 815, 621 P.2d 764 (1980), is not helpful here. Amici Br. at 10 n.5. Like *Geer* does regarding Connecticut law, *Gillette* references Washington State holding title to wildlife "as trustee for the common good," but the court never

mentions the public trust doctrine nor cites any case involving the public trust doctrine. *Gillette*, 27 Wn. App. at 820. Twenty-four years after deciding *Gillette*, the same division expressly stated that no Washington case has ever applied the public trust doctrine to terrestrial wildlife. *Citizens for Responsible Wildlife Mgmt. v. State*, 124 Wn. App. 566, 570, 103 P.3d 203 (2004).

Two other United States Supreme Court cases briefly cited by Amici also do not support expanding the public trust doctrine to the air. Neither case involved the public trust doctrine, and neither case involved Washington law. In *Georgia v. Tennessee Copper Co.*, the Court granted an injunction against Tennessee copper companies whose exhaust gases constituted a public nuisance when they blew over the border into the State of Georgia. *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 239, 27 S. Ct. 618, 51 L. Ed. 1038 (1907). That the Court allowed Georgia to sue Tennessee Copper under a theory of public nuisance has no bearing on whether the public trust doctrine should be expanded to include the air.

Amici then claim that the air is just like navigable waters because it cannot be privately owned. Amici Br. at 12 (quoting *United States v. Causby*, 328 U.S. 256, 261, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946)). *Causby*'s statement that the airspace cannot be privately owned is not entirely accurate in Washington. See, e.g., *Ackerman v. Port of Seattle*,

55 Wn.2d 400, 410–12, 348 P.2d 664 (1960) (holding that private landowners own the airspace over their property below the minimum altitude for safe flight), *overruled on other grounds*, *Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wn.2d 6, 10–11, 548 P.2d 1085 (1976). Even if airspace were not subject to private ownership, it would not logically follow that the airspace, or the air itself, should be considered part of the public trust doctrine.

Amici cite and discuss constitutional provisions from other states that expressly address natural resources, including some that expressly reference the “air.” Amici Br. at 12–13 & n.8 (citing Michigan, Hawaii, and Rhode Island constitutions). Indeed, numerous other states also have constitutional provisions addressing natural resources in various fashions. *See generally* Bret Adams et al., *Environmental & Natural Resources Provisions in State Constitutions*, 22 J. Land Resources & Env'tl. L. 73 (2002) (surveying constitutional provisions across all 50 states). These other states’ constitutional provisions, however, stand in sharp contrast to Washington’s constitutional language in section 1 of article XV. That provision forbids alienation only of harbor areas and the navigable waters extending out from such harbor areas. No other provision in the constitution either mentions or imposes similar restrictions on the air. Where our constitution contains much different language than other states’

constitutions, case law from those other states construing their constitutions does not constitute persuasive authority. *AUTO*, No. 85971-0, slip op. at 14.

III. CONCLUSION

The trial court's dismissal of Plaintiff's complaint should be affirmed.

RESPECTFULLY SUBMITTED this 26th day of October 2012.

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify that on the 26th day of October 2012, I caused to be served State's Answer to Law Professors' Amici Curiae Brief in the above-captioned matter upon the parties herein as indicated below:

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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 26th day of October 2012 in Olympia, Washington.


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Dear Clerk,

Please find attached for filing in Case No. 87198-1, Svitak v. State, the State's Answer to Law Professors' Amici Curiae Brief, filed by Leslie R. Seffern, phone 360-586-4613, WSBA #19503, email leslies@atg.wa.gov.

Thank you,

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