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STATE OF WASHINGTON

COURT OF APPEALS No. 54300-8-I

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOE 11 AND SEATTLE JOHN DOES 6 & 9,  
Appellants/Cross-Respondents,

BELLEVUE JOHN DOES 1-10, FEDERAL WAY JOHN DOES 1-5  
AND JANE DOES 1-2, AND SEATTLE JOHN DOES 1-5, 7-8, & 10-17,  
AND SEATTLE JANE DOE 1 AND JOHN DOE,  
Plaintiffs/Cross-Respondents,

v.

BELLEVUE SCHOOL DISTRICT #405, FEDERAL WAY SCHOOL  
DISTRICT #210, AND SEATTLE SCHOOL DISTRICT #1,  
Respondents, and

THE SEATTLE TIMES COMPANY,  
Respondent/Cross-Appellant.

ANSWER OF RESPONDENT SEATTLE TIMES COMPANY  
TO PETITION OF BELLEVUE JOHN DOE #11  
AND SEATTLE JOHN DOE #6

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## I. IDENTITY OF RESPONDENT

Respondent is Seattle Times Company, publisher of The Seattle Times (“the Times”), Intervenor in the trial court and Respondent/Cross-Appellant in the Court of Appeals.

## II. STATEMENT OF THE CASE

For its Statement of the Case, the Times refers to its Answer filed February 13, 2006, opposing the Petition for Review of Bellevue John Does 1, 2, 3, *et al.*, in this case.

## III. ARGUMENT

### A. Petitioners Misinterpret the Decision of the Court of Appeals and the Public Disclosure Act.

Bellevue John Doe #11 and Seattle John Doe #6 (“Petitioners”) advance five separately-numbered arguments why this Court should review the decision of the Court of Appeals in *Bellevue John Does v. Bellevue School Dist. #405*, 129 Wn. App. 832, 858-59, 120 P.3d 616 (2005). All but one of those arguments rests on a misreading of the decision and/or the Public Disclosure Act at RCW 42.17.010, *et seq.* (“PDA”).

Petitioners argue first that the decision in *Bellevue John Does* conflicts with the decision of Division Two in *City of Tacoma v. Tacoma News Tribune, Inc.*, 65 Wn. App. 140, 827 P.2d 1094 (1992). Petition at 5-6. The argument ignores Division One’s careful reconciliation of its

decision with the result in the *City of Tacoma* case, discussed at length in the Times' previous Answer to the Petition for Review of Bellevue John Does 1, 2, 3, *et al.*, at 4-7.

The Petition attempts to oversimplify the decisions in both cases, and even misreads portions of the Court of Appeals opinion below, claiming, for example, "Although the school districts in Petitioners' cases determined that the allegations were not substantiated, Division One nevertheless held that they were." Petition at 6. What the court actually held was that the names should be disclosed *even if* the district found charges "unsubstantiated":

This is because "unsubstantiated" often means only that an investigator, faced with conflicting accounts, is unable to reach a firm conclusion about what really happened and who is telling the truth. . . . But it is also possible that the accuser was accurately reporting inappropriate conduct. Where that possibility exists, the public has a legitimate interest in knowing the name of the accused teacher.

*Bellevue John Does*, 129 Wn. App. at 856. The difference is significant, because it also undercuts Petitioners' argument that the Court of Appeals "acted as finder of fact in each of the John Doe cases." Petition at 6. What the Court of Appeals decision actually did was avoid the need to re-examine the facts of each case; it required disclosure in all cases unless the

allegations are patently false – i.e., clearly, obviously, and plainly false.<sup>1</sup> Where falsity is obvious on its face, there is no need for “fact finding”. There also is no need for definitions or guidance as to what constitutes “patent” falsity.

For a second argument, Petitioners argue that until allegations against a teacher, a government employee, are proven, there is no “information concerning the conduct of government” subject to scrutiny under RCW 42.17.010(11). Petition at 7. The argument blindly ignores the obvious meaning of “conduct” in this context. The conduct in question is not the specific allegation; it is the conduct of teaching in general. Allegations of individual misconduct are, without question, “information concerning the conduct” of that vital governmental activity. *See Brouillet v. Cowles Pub’g Co.*, 114 Wn.2d 788, 798, 791 P.2d 526 (1990); *Cowles Publ’g Co. v. State Patrol*, 109 Wn.2d 712, 726-27, 748 P.2d 597 (1988).

In a related third argument, equally illogical, Petitioners claim that no “conduct of government” subject to scrutiny under RCW 42.17.010(11) can be deemed to have occurred until it is established that the individual teacher has “acted”. The answer is the same: the “act” subject to scrutiny

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<sup>1</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (2002) at p. 1654, defines “patently” as “clearly, obviously, plainly.” *See* discussion at p. 7 of Times’ previous Answer to the Petition for Review of Bellevue John Does 1, 2, 3.

under the PDA is the activity of teaching. The documents in question contain information relating to that activity.

Petitioners fourth argument, that they have a constitutional right to a name-clearing hearing before their names can be released (Petition at 9) is discussed under a separate heading below.

Petitioners' fifth and closing argument suggests that this Court should accept review to provide agencies and the public with guidance that is "unambiguous and capable of being justly and correctly applied." The Times submits that the Court of Appeals has already done exactly that in its opinion below.

Any ambiguity in this case stems from the attempts of these and other Petitioners to advance the decision in *City of Tacoma v. Tacoma News Tribune, supra*, as a rule of general application beyond its unique facts. That attempt was properly rejected by the court below (*see Bellevue John Does*, 129 Wn. App. at 856-57) and should be rejected by this Court as well. Any attempt to extend *City of Tacoma* beyond its limited application by the court below would be inconsistent with this Court's decision in *Brouillet v. Cowles Publishing Co., supra*, and the purposes of the PDA.

**B. There Is No Constitutional Right to a Hearing Before Release of the Records in This Case.**

Petitioners argue that they have a constitutional right to a name-clearing hearing before their names can be released. Petition at 9. This argument was discussed at length and rightly rejected by the Court of Appeals. *Bellevue John Does*, 129 Wn. App. at 859-61 (“Harm to reputation, standing alone, does not implicate the procedural guarantees of the Due Process Clause.” *Id.* at 860 (citing *Paul v. Davis*, 424 U.S. 693, 709, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976))).

Petitioners renew the argument here, citing two more cases, one from Alaska, *O’Leary v. Superior Court*, 816 P.2d 163 (1991), and a case from the Fifth Circuit U.S. Court of Appeals, *United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975), that predates *Paul v. Davis*, *supra*. Both cases involved disclosures by grand juries and “the opprobrium resulting from being publicly and officially charged by an investigatory body of high dignity with having committed serious crimes.” *United States v. Briggs*, 514 F.2d at 799.<sup>2</sup> There is no suggestion that disclosures in the present case rise to that level of official endorsement.

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<sup>2</sup> The disclosure in the *O’Leary* case was identification of “interested parties” in a grand jury report concerning the actions of the Anchorage School District and local law enforcement in connection with investigating sexual misconduct by a teacher. The court ordered certain allegations expunged, but also concluded “that the names of most of the interested parties mentioned in the Recommendations should be released.” *O’Leary v. Superior Court*, 816 P.2d at 174.

Even if there were a reviewable issue suggested by either of these cases, this Court considered the same issues at length in *In re Meyer*, 142 Wn.2d 608, 16 P.3d 563 (2001), and concluded that “reputational interest does not give rise to a liberty interest” under the due process clause of the Fourteenth Amendment, relying again on the U.S. Supreme Court’s decision in *Paul v. Davis, supra*. Petitioners have suggested no reason why the Court should review this issue yet again.

#### IV. CONCLUSION

The Times respectfully submits that there are no issues of public importance raised in this Petition that require this Court’s attention. The Court should decline review.

RESPECTFULLY SUBMITTED this 10th day of March, 2006.

Davis Wright Tremaine LLP  
Attorneys for Seattle Times Company

By   
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CERTIFICATE OF SERVICE

I certify that on the 10<sup>th</sup> day of March, 2006, I caused a true and correct copy of the attached document titled:

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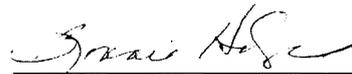
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EXECUTED this 10th day of March, 2006 at Seattle, Washington.



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