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STATE OF WASHINGTON

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Court of Appeals No. 54300-8
IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

BELLEVUE JOHN DOES 1-11, FEDERAL WAY JOHN DOES 1-5
AND JANE DOES 1-2, and SEATTLE JOHN DOES 1-13 and JOHN
DOE,

Appellants,

vs.

BELLEVUE SCHOOL DISTRICT #405, a municipal corporation and a
Subdivision of the state of Washington, FEDERAL WAY SCHOOL
DISTRICT #210, a municipal corporation and a subdivision of the state of
Washington, and SEATTLE SCHOOL DISTRICT #1, a municipal
corporation and a subdivision of the state of Washington, and

THE SEATTLE TIMES COMPANY

Respondents.

ANSWER OF BELLEVUE JOHN DOE #11 AND SEATTLE JOHN
DOE #6 TO BRIEFS OF AMICI

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- Ashcroft v. ACLU*, 542 U.S. 656, 695, (2004)4
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Other

- Best, Joel, *Threatened Children*, Chicago: University of Chicago Press,
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I. ARGUMENT

The media Amici in this case advance their rule as if they are champions for the protection of children. Their emphasis on child abuse nimbly steers attention away from public disclosure analysis and instead focuses on how to protect children. Not only is its legal reasoning faulty, but their proposed rule would fail to accomplish what they profess to want. In fact, adoption of their rule would do more harm to children than it would protect them.

1. **Media's Position Exploits Children, Does Not Help Them.**

The thrust of media amici's argument is that failure to give them the names of victims of unsubstantiated allegations of misconduct will result in the widespread sexual abuse of children. This unfounded assertion (discussed below) is consistent with documented instances false fears created by the media about children.

a) *Media Has Documented History of False Reporting about Children.* Consider this headline, "MISSING CHILDREN: A Fearful Epidemic." *Culture of Fear*, Glassner, Barry, p. 64 (1999), quoting *USA Today Magazine*, July 1994, pp. 46-48. Newspapers and magazines saturate the news with stories like Elizabeth Smart together

with the statistic that 800,000 children are reported missing each year in the United States.

But what the newspapers do not report is that only 200-300 or .0003 of these children are actually abducted by strangers. *Culture of Fear*, at 64, citing *Statistics from the FBI's Uniform Crime Reports, Centers for Disease Control Reports*. The rest are by family members or are runaways or otherwise returned. Our children have no serious risk of being abducted by strangers. *Culture of Fear* at 64, Id.

But parents today do not know this. Instead, three out of four parents falsely believe that their child is in real danger of being abducted by a stranger. *Culture of Fear*, at 61. The media's "commemorative" pieces on the anniversaries of violent events, distort reality and keep the fears alive.

This use of children to sell news isn't isolated.¹ When the internet came full into the fore, the media made short work of making it a danger

¹ Widespread media reports of children dying and being injured from Halloween candy has no basis in fact. No children have died or been seriously injured as a result of strangers sabotaging candy. See *Culture of Fear*, at 29, citing Judy Klemesrud, "Those Treats May be Tricks," *New York Times*, 28 October 1970, p 56. *Culture of Fear*, at 31, citing polls cited in Joel Best, *Threatened Children*, (Chicago: University of Chicago Press, 1990), p. 132. citing Bill Ellis, "New Halloween Traditions in Response to Sadism Legends," in Jack Santino, ed., *Halloween and Other Festivals of Death and Life* (Knoxville: University of Tennessee Press, 1994), pp. 24-44.

to children. Only when the issue reached the U.S. Supreme Court, did law and reason prevail over fear.

In 1995, *Time Magazine* published the following article: "CYBERPORN EXCLUSIVE – A new study shows how pervasive and wild it really is. Can we protect our kids – and free speech?" It reported that a "research team" at a university had found 917,410 sexually explicit images, short stories or film clips and that 83.5% of the photos on Usenet newsgroups were pornographic. *Culture of Fear at 59, citing Time, 3 July 1995, pp.38-45.*

What no one reported was that the "investigator" who performed the study was an undergraduate student, who worked in casinos and had also written a book entitled, "The Pornographer's Handbook: How to Exploit Women, Dupe Men & Make Lots of Money." No one reported that the "findings" of this internet pornography report, examined by Vanderbilt University professors after its publication, were in fact false. *Culture of Fear at 59, citing , citing Donna Hoffman and Thomas Novak, "A Detailed Critique of the Time Article," July 1995, <http://vanderbilt.edu/Owen/Homepage/html>.*

Instead, the story was repeated until it became "truth" and as a result, Congress passed the Communications Decency Act in 1996,

criminalizing certain Internet speech in an effort to protect children. *Ashcroft v. ACLU*, 542 U.S. 656, 695, (2004).

The case challenging the statute came before the U.S. Supreme Court. In *Reno v. A.C.L.U.*, 521 U.S. 844, 138 L.Ed 2d 874, 117 S. Ct.2329 (1997), the Court held that the statute was unconstitutional because it was not narrowly tailored to serve a compelling government interest and because less restrictive alternatives were available. In essence, the law could have had the effect of “reducing the adult population to reading only what is fit for children.” *Culture of Fear* at 60. Still, parental fears persist.

b) *Media Amici Use False Reporting about Children to This Court.* In this case, the media amici again use our desire to protect children as their trump card to get identities of allegation victims, without regard to how attenuated the information is to their stated goal of protecting children. To support their positions, the media amici cite instances and statistics of child abuse reported in newspapers and magazines. They are creating their own authority and then citing it in their briefs.

SESAME’s intellectual dishonesty is further revealed in the only official publication it cites, the Department of Education’s report,

Educator Sexual Misconduct, *A Synthesis of Existing Literature* (2004) [emphasis added]. The preface of this report states that the report was mandated by statute. It also includes the caveat that there are few studies from which to draw conclusions. Further, what studies had been done on educator sexual abuse “do not provide information at a level of reliability and validity appropriate to the gravity of these offenses.” Department Report at 4.

Indeed, the sources on which the Department relied include the following:

“Coaches Who Prey,” *The Seattle Times*
“Betrayal of Trust”, *Dallas Morning News*
SESAME 1997, www.sesamenet.org
“Dirty Secrets,” *Pittsburgh Post-Gazette*

Misconduct report at 15. The Department is relying on information from newspapers – some of it *The Seattle Times*, itself. In circular reasoning, media amici feed their articles to the Department, the Department relies on them and then the media amici justify their position with the Department’s report.

SESAME amicus freewheelingly misstates the synthesis of the Department to falsely proclaim that 9% of 8-11th graders experience unwanted sexual contact from an educator. *SESAME* at 12. Far from a “conclusion” of the Department, the misstatement is taken from page 18 of

a 156 page report where the Department begins by summarizing the findings of the various sources it included in the synthesis. *One* source the Department used, conducted a study to find out children's experience of unwanted sexual conduct from *all* sources, including *peer* sources. The purpose of the survey was *not* to study educator conduct. The 9% figure derived from the students' experiences from all sources and there was no breakout by source. SESAME deliberately misleads this Court, confident that the Court's fear for children will cause it to overlook SESAME's inaccuracy and dishonesty in its briefing to this Court.

A careful review will show that SESAME's methods are the same dishonest renderings as the Seattle Times put in its briefs. The Seattle Times consistently misstates the facts and holdings of cases it cites in its briefs. It also uses a culture of fear to influence this Court (recall that its "Coaches Who Prey" series occurred at the time this case was before this Court for direct review; recall that The Seattle Times cited to this Court as persuasive authority e-mail responses it had elicited during this litigation for the purposes of this litigation).

Their tactics worked at Division One of the Court of Appeals. They are counting on the same blind fear to distract this Court away from sound legal reasoning and into groundless, reactionary decision-making.

Amicus ACLU is accurate when it says that identities of the victims of allegations have no logical connection to the asserted need for identities. As so thoroughly discussed in the briefing already submitted to the Court, sound legal reasoning reveals that, names are not needed to monitor how school districts respond to and investigate allegations of abuse.

Indeed, The Seattle Times' protestations about protecting children are belied by its own inaction. The Seattle Times has had in its possession all of the records of every sexual misconduct allegation made in the school districts in this lawsuit *for four years*. Yet, it has buried them and no stories have been printed. This is hardly the conduct of reporters who truly fear for children's safety and want the public to know how districts are handling allegations.

Rather, the Times' inaction belies its true motive: securing the names of hapless teachers will add drama to the story that will sell newspapers. More importantly, a ruling in its favor will have far reaching ramifications in future PRA cases. That is the Times' true goal. It has nothing to do with children.

The PRA should not be manipulated by media peeping toms whose goal is to obtain private facts to sensationalize their stories. Their quest

exploits children in an effort to sell newspapers. It is transparent in their blatant misstatements to this Court and their failure to act on the records they have had in their possession for four years. The PRA is about responsible reporting of government to the people. It is not a vehicle for gossip, innuendo, and profits.

Names of the victims of unsubstantiated allegations will not help protect children any more than the complete disclosure of the redacted records already has.

2. Disclosure of Identities Will Cause Great Harm to Children.

If students and parents discover that a school district has not appropriately investigated allegations of abuse, they can sue the school district. They can sue the teacher. The same is not true for teachers. Teachers have no recourse for the damages they suffer if their identities are disclosed in conjunction with false or unsubstantiated allegations of abuse. Students have absolute immunity. The stakes are high and teachers know this.

Under this cloud, if teachers know that regardless of whether allegations are substantiated or not their names will be published in conjunction with those allegations, they will make different choices. And those choices hurt our children:

a) Effective teaching damaged. Teachers will be afraid to hold children accountable academically or behaviorally. Rather than incur the ire of children who receive poor grades, teachers will be more inclined to move them along. Behaviorally, the classrooms will deteriorate. Teachers will not risk disciplining unruly students for fear of reprisal. The quality of education for Washington children will suffer both from lack of learning environment and from lack of academic rigor.

This is not speculation. Teachers' reputations would be destroyed by the false accusation of one student. Reichardt v. Flynn, 374 Md. 361, 823 A.2d 566 (2003) (Students asserting false allegations of sexual misconduct against teachers have absolute privilege in defamation action). Whether or not ultimately shown to be "unsubstantiated" a.k.a. "unproven," the teacher is forever tainted. Reichardt, 374 Md. At 392. Teachers will do what they must to avoid these accusations.

b. Teachers will leave or never enter the profession. Teachers in this state must become educated and certified to teach. It is specialized training for a specialized profession. If their names are published in conjunction with unsubstantiated allegations of sexual misconduct, they are forever tainted. They will never again regain their position in the community and how other people view them. Reichardt,

374 Md. at 394. If they apply for a job, administrators will take the safest course and not hire them – regardless if the allegations were ultimately proven to be unsubstantiated. Reichardt, 374 Md. at 394.

As a state and as a country the public has a crying need for teachers. In this decade, the United States will need 2.2 million new teachers for public schools because of attrition, retirement, and anticipated growth in enrollments. Reichardt, 374 Md. at 393. The need for new teachers in high poverty areas is even more acute. Reichardt, 374 Md. at 393. 6% of the teaching force leaves the profession every year and 20% of new hires leave teaching with three years. Reichardt, 374 Md. at 393. In urban districts, 50% of teachers leave the profession in the first five years of teaching. Reichardt, 374 Md. at 393.

It cannot be overstated that we cannot lower our standards to fill that need. It equally cannot be more emphasized that we *must protect* our good teachers in order to attract and retain them. We cannot do so if they know that their preparatory education, certification, reputations, and livelihood can all be destroyed on the strength of an unsubstantiated allegation of sexual misconduct.

c. Students' power harms their development. The Times' proposed rule will cripple children's education by the very children it was

designed to serve. Students already know that there are some words that will get them “nowhere” with administrators and some words that will get them “everywhere.” Reichardt, 374 Md. at 394-395. Students’ knowledge that they can ruin a teacher’s career by the very accusation of misconduct is a dangerous weapon in young hands. These children do not have the emotional maturity to understand the consequences of their actions. But they certainly understand and will use available methods to vent their anger on a teacher with whom they are displeased, without fully comprehending the import of their words. Giving students unfettered power in this way will chill the student/teacher relationship and their learning process.

II. CONCLUSION

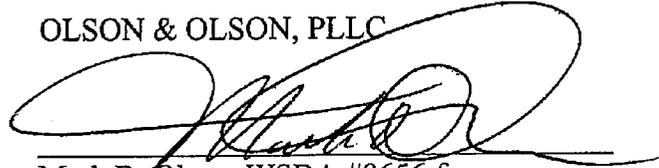
A genuine and honest analysis of this case reveals that children are well protected with redacted records that show how school districts respond to allegations of abuse. With that knowledge, students and families have the tools they need to seek recourse and change, if needed.

The real danger to children lies in a rule that would slash the quality of their education at a time when schools are already struggling to give our children the proper foundation they need. A rule that releases

teachers' names on the strength of unsubstantiated allegations of misconduct elevates fear over truth. It is our children who will suffer.

RESPECTFULLY SUBMITTED this 16th day of March, 2007.

OLSON & OLSON, PLLC

A large, stylized handwritten signature in black ink, appearing to read 'Mark D. Olson', is written over a horizontal line.

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Declaration of Service

The undersigned certifies under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

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CHRISTOPHER CARPENTER

I am employed at Olson & Olson, PLLC. On March 16, 2007, the Answer of Bellevue John Doe #11 and Seattle John Doe #6 to Briefs of Amici was filed with the Clerk of the Court, Supreme Court of the State of Washington, and true and correct copies were sent via the method indicated to the following individuals:

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Signed at Seattle, Washington this 16th day of March, 2007.



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