82744-3

State v. Hirschfelder (8) (SAG)

Cause No. 36804-II

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I, Matthew Hirschfelder, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Please accept this statement of additional grounds for review in the Washington State Court of Appeals Division Two on behalf of myself, defendant Matthew Hirschfelder. I request the court moves for a declaratory order determining RCW 9A.44.093(1)(b), as applied to myself, to be unconstitutionally discriminatory and in violation of my constitutional rights.

I ask the court of appeals to consider the effect and interpretation of the phrase "school employee" as defined by Washington State law as discriminatory and declared unconstitutional by its current definition. The state definition of school employee,

> *(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.[2005 c 262 § 2; 2001 2nd sp.s. c 12 § 357; 1994 c 271 § 306; 1988 c 145 § 8.]*

for the purpose of this argument, would equitably be defined as a designation of employees who work with and prepare school-aged students for the state GED, Certificate of Completion, and Diploma requirements. However, to better understand the inclusiveness and exclusiveness of the phrase "school employee" by the state's actual definition, one must also understand the definition of employee of a common school (RCW28A.150.010) and employee of a private school under RCW 28A.195.

> **RCW 28A.150.010 Public schools.**
> Public schools shall mean the common schools as referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense.
> [1969 ex.s. c 223 § 28A.01.055; (2004 c 22 § 24, Referendum Measure No. 55 failed to become law). Formerly RCW 28A.01.055.]
>
> **RCW 28A.150.020 Common schools.**
> "Common schools" means schools maintained at public expense in each school district and carrying on a program from kindergarten through the twelfth grade or any part thereof including vocational educational courses otherwise permitted by law.
> [1969 ex.s. c 223 § 28A.01.060. Prior: 1909 c 97 p 261 § 1, part; RRS § 4680, part; prior: 1897 c 118 § 64, part; 1890 p 371 § 44, part. Formerly RCW 28A.01.060, 28.58.190, part, 28.01.060.]

There are many definitions to encompass "schools and their employees" within state and federal statute. Examples include educational spending in labor and industry, retirement plans, spending allocations, and expense budgets; however, for the purpose of RCW 9A.44.093 the employees within the educational learning environment responsible for preparing students excludes employees who prepare about 3 to 7 percent of students. The result in RCW 9A.44.093 is a law that discriminates between employees within the state that do the same work and at times serve the same population.

For example, a partnership between local high schools and community colleges allow high school students to receive credit with a state-recognized Running Start program. Running Start students receive free college credit and those credits doubly count for the stated high school graduation requirements. A student may register for one or more college classes with variations between local programs. According to RCW 9A.44.093 high school students 16 years or older registered for Running Start may attend the local community college or university, get high school credit, and have sexual intercourse with their college teacher. The professor is guilty of nothing under the current law. In contrast, this public school teacher is being prosecuted for allegedly having a sexual relationship with an adult student. The law demonstrates discrimination between two teachers who, in fact, could have had the same student in class that day, simply because the RCW's current definition "*school employee*" would apply inequitably.

Additional education programs that are in reform work to make learning more accessible to students. Education reform, as recognized by the Office of Public Instruction, has expanded to allow online courses and community-based programming. These reform programs present additional risk to students when students train, job shadow, and participate in service-learning programs out in the community. According to RCW 28A.150.500 educational agencies offering vocational education programs can utilize local advisories (potential non-school employees) to integrate students into future careers (see addendum A). For example, a high school student can get credit for attending a work release program. Wouldn't that mean the employer or fellow employee is acting as an agent or "school employee" of the state? Once again, based on the current definition of the law, they too can have a sexual relationship with a youth the age of consent. The law discriminates by exclusion of those people who serve education but are not within the definition. It seems like a free pass to potential trouble.

The law RCW 9A.44.093 has serious flaws. The statute itself excludes by definition those other "school employees" who effectively play a key role in the graduation of high school students. RCW9A.44.093 is vague, undefined with its terminology, misconstrued by the variety of interpretations, and unconstitutionally corrupt. With its inability to inclusively define all the school employees who prepare students for graduation, RCW9A.44.093 fails in its attempt to fully protect students and thus ends up discriminating between the very employees that serve the system. As a result, I respectfully request the Washington State Court of Appeals Division Two accept this motion for dismissal.

Respectfully,

Matthew Hirschfelder

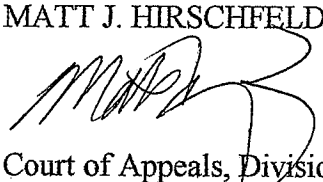
(Addendum A)

Local Advisory Boards promote healthy transition into the workforce; yet, they create the programs that present the risk. The definitions of public and common schools exclude many agents who train and prepare students in vocational programs. While some programs operate under the state definition, others are spurred by community colleges and volunteers who daily train students in each community. Once again, the law does not protect high school students in either of these off campus environments.

> **RCW 28A.150.500**
> **Educational agencies offering vocational education programs -- Local advisory committees -- Advice on current job needs.**
> (1) Each local education agency or college district offering vocational educational programs shall establish local advisory committees to provide that agency or district with advice on current job needs and on the courses necessary to meet these needs.
>
> (2) The local program committees shall:
>
> (a) Participate in the determination of program goals;
>
> (b) Review and evaluate program curricula, equipment, and effectiveness;
>
> (c) Include representatives of business and labor who reflect the local industry, and the community; and
>
> (d) Actively consult with other representatives of business, industry, labor, and agriculture.
> [1991 c 238 § 76.]
> **NOTES:**
> **Effective dates -- Severability -- 1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

I do hereby certify that I sent a copy of this statement of additional grounds for review to my counsel and the Court of Appeals Division II on this 20th day of February 2008.

MATT J. HIRSCHFELDER



DATE:
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CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of SAG
to M. Valentine
& 3/4/08 KSC
Date Signed