

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JAN -5 PM 3:38

BY RONALD F. CARPENTER

NO. 83728-7

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
DEPARTMENT OF EARLY LEARNING,

Respondent,

v.

KATHLEEN HARDEE,

Petitioner.

**STATE'S ANSWER TO AMICI CURIAE CHILDCARE
ADVOCATE RESOURCE AND EDUCATION, SERVICE
EMPLOYEES INTERNATIONAL UNION 925, AND NORTHWEST
JUSTICE PROJECT**

ROBERT M. MCKENNA
Attorney General

Patricia L. Allen
Assistant Attorney General
WSBA #27109
800 5th Avenue Suite 2000
Seattle, WA 98104
(206) 464-7045

Jay Douglas Geck
Deputy Solicitor General
WSBA #17916
PO Box 40100
Olympia, WA 98504-0100
(360) 586-2697

ORIGINAL

**FILED AS
ATTACHMENT TO EMAIL**

TABLE OF CONTENTS

I. IDENTITY OF THE ANSWERING PARTY1

II. INTRODUCTION.....1

III. ARGUMENT2

 A. Amici Do Not Show A Significant Constitutional Issue
 For Requiring Clear, Cogent, And Convincing Evidence
 For Child Care Licensing.....2

 1. The Burden Of Proof That Provides Due Process
 Does Not Shift Based On *Ad Hoc* Evaluation Of
 Allegations And Charges.....4

 2. Reputational Damage Alone Is Not A Basis For
 Challenging The Statutory Burden Of Proof.....6

 3. The Higher Standard of Proof for Teaching Licenses
 Reflects A Legislative Choice And Does Not
 Demonstrate a Constitutional Requirement For Child
 Care Licensees.....9

 B. Inconsistencies In Burden of Proof Cases After *Nguyen*
 Reflect That Decision And Do Not Demonstrate Error In
 This Case.....9

 C. The Court Of Appeals Passing Reference To An Erotic
 Dancer Registration Is Not A Reason For Review By
 This Court12

 D. The NWJP Amicus Brief Does Not Provide Any Reason
 For The Court To Accept Review Of The Petitioner’s
 Argument That The Review Judge Exceeded Her
 Authority13

 E. Nothing In The Record Shows That RCW 43.215.300(2)
 Impermissibly Discriminates Based on Sex And This
 Issue Cannot Be Raised For The First Time By Amici16

IV. CONCLUSION17

TABLE OF AUTHORITIES

Cases

<i>Addington v. Texas</i> , 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979).....	7
<i>Eidson v. Dep't. of Licensing</i> , 108 Wn. App. 712, 32 P.3d 1039 (2001).....	10, 11
<i>In re Chubb</i> , 46 Wn. App. 530, 731 P.2d 537 (1987).....	7
<i>In re Personal Restraint of McKay</i> , 127 Wn. App. 165, 110 P.3d. 856 (2005).....	8
<i>Nguyen v. Dep't. of Health</i> , 144 Wn.2d 516, 1029 P.3d 689 (2001).....	10, 11
<i>Ongom v. Dep't of Health</i> , 159 Wn.2d 132, 104 P.3d 29 (2006).....	5, 11
<i>Ongom v. Dep't. of Health</i> , 124 Wn. App. 935, 104 P.3d 29 (2005).....	11
<i>Retired Pub. Employees Council of Wash. v. Charles</i> , 148 Wn.2d 602, 62 P.3d 470 (2003).....	3
<i>Riviera v. Minnich</i> , 483 U.S. 574 (1987).....	8
<i>Santosky v. Kramer</i> , 455 U.S. 745, 102 S. Ct. 1388 (1982).....	7
<i>State v. Dahl</i> , 139 Wn.2d 678, 990 P. 2d 396 (1999).....	8
<i>State v. Zeigenfuss</i> , 118 Wn.2d 110, 74 P.3d 1205 (2003).....	8

Tapper v. Employment Sec. Dep't.,
122 Wn.2d 397, 858 P.2d 494 (1993)..... 14

Vance v. Terrazas,
444 U.S. 252, 100 S. Ct. 540, 62 L. Ed. 2d 461 (1980)..... 7

Statutes

RCW 18.118	13
RCW 34.05.400	3
RCW 34.05.464	14
RCW 34.05.464(4).....	13, 14, 15
RCW 34.05.570(3).....	14
RCW 43.215.005(3)(c)	1
RCW 43.215.300(2).....	passim
WAC 137-104-050(14).....	8
WAC 170-03.....	3
WAC 170-296.....	5, 13
WAC 170-296-0140.....	5
WAC 170-296-0200.....	4
WAC 170-296-0215.....	4
WAC 170-296-0450.....	4
WAC 170-296-0460.....	4
WAC 181-86-170(3).....	9

Rules

RAP 13.4(b)..... 14, 17

Constitutional Provisions

U.S. Const. amend. IV 7

I. IDENTITY OF THE ANSWERING PARTY

The Respondent State of Washington, Department of Early Learning (DEL or Department) answers the amicus curiae memoranda filed by Northwest Justice Project (NWJP) and Childcare Advocate Resource and Education (CARE)/Service Employees International Union 925, Early Education Division (SEIU).

II. INTRODUCTION

As stated in the Answer to the Petition for Review, the legislature constitutionally set the burden of proof in child care licensing cases as the preponderance of the evidence. RCW 43.215.300(2). That standard is consistent with the interests at stake in child care licensing and the legislature's specific findings that the health, safety, and wellbeing of children in care is "paramount over the right of any person to provide care." RCW 43.215.005(3)(c). Ms. Hardee's Petition for Review (Petition) does not show any genuine inconsistency with prior decisions; there is no merit to Ms. Hardee's argument that the standard of proof in RCW 43.215.300(2) violates due process; and there is no need for clarity for child care licensing.

The amici briefs cloud the issues in this case. CARE/SEIU makes claims about disparate treatment of women, but no such issue was raised or litigated below and no such issue is presented by the record. The amici

dwell at length on a reference to the licensing of erotic dancers, complaining that comparing child care providers to such dancers is offensive. But due process rights do not depend on a superficial argument that Ms. Hardee has a greater interest in her home child care license than a dancer has in a license. Therefore, the Court should decline the amici's invitation to be offended. Instead, the Court should recognize how the importance of providing child care supports using the preponderance of evidence, because that standard reflects the public interest in protecting children from inadequate providers.

Thus, the amici fail to cast any doubt on the power of the Legislature to adopt a preponderance standard for home child care licensing. Instead, the amici provide further reasons for the Court, should review be granted, to take this opportunity to review and reverse the *Nguyen* and *Ongom* decisions and remove any cloud over this legislative power.

III. ARGUMENT

A. **Amici Do Not Show A Significant Constitutional Issue For Requiring Clear, Cogent, And Convincing Evidence For Child Care Licensing**

The first argument in the Petition is that the statutory preponderance of evidence standard for child care licensing actions should be overturned on due process grounds. The *Matthews v. Eldridge*

procedural due process analysis shows that the statutory standard satisfies due process. *See* Response Br. at 15-23. The preponderance standard is substantial and meaningful, particularly where, as here, it is accompanied by a panoply of procedural protections such as: the right to notice of state action; the right to be heard; the right to representation; the right to present evidence and witnesses; the right to conduct discovery; the right to cross-examine state witnesses and challenge state evidence; the right to a written decision; and the right to an unbiased decision-maker. *See generally* RCW 34.05.400 et seq. (outlining processes for adjudicative proceedings); WAC 170-03. Under the statutory standards, child care providers will prevail except when the Department shows it is more likely than not that a provider committed violations. RCW 43.215.300(2).

The amici do not show beyond a reasonable doubt¹ why a clear, cogent, and convincing standard is constitutionally mandated such that RCW 43.215.300(2) should be declared unconstitutional. Indeed, the amici briefs essentially ignore the significant public interests that support the legislative decision that the Department should take action when a preponderance of evidence shows a violation of the laws designed to protect children. *See* Response Br. at 18-23. Instead, contrary to

¹ This is the heavy burden placed on those attempting to prove a statute unconstitutional. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003).

Matthews v. Eldridge, the amici briefs seem to assume that procedural due process depends solely on Ms. Hardee's private interest. Because they disregard two of the three *Matthews v. Eldridge* factors, the amici briefs do not show any constitutional defect in the court of appeals ruling.

To the extent the amici briefs then focus on the private interest of the licensed provider, the amici offer a number of erroneous arguments regarding procedural due process rights.

1. The Burden Of Proof That Provides Due Process Does Not Shift Based On *Ad Hoc* Evaluation Of Allegations And Charges

CARE/SEIU argues that the type of allegations leading to revocation of a family home child care license should sometimes be considered in determining what type of process is due. CARE/SEIU Amicus Br. at 5-8. Far from quieting litigation, this *ad hoc* approach would multiply due process challenges. The burden of proof required by due process should not vary in this unworkable manner.

To see the difficulty with CARE/SEIU's assertion that some allegations and violations are more significant, the Court need only examine the family home child care licensing laws. There are four separate regulations setting forth 17 separate ways in which a family home child care provider's license might be revoked. WAC 170-296-0200; WAC 170-296-0215; WAC 170-296-0450; WAC 170-296-0460.

Underlying these 17 methods of revocation are 103 distinct regulations specifying facility requirements, most with subsections, many of which could be a contributing factor in a revocation decision. WAC 170-296. CARE/SEIU suggests that these regulations and reasons for revocation, or the particular effect in a case, sometimes justifies a higher burden. This *ad hoc* justification for a higher burden of proof does not reflect *Matthews v. Eldridge* balancing and is not workable.²

Amici also argue that due process requires a higher standard based on a claim that the violations in Ms. Hardee's case involve "subjective" charges. CARE/SEUI Amicus Br. at 5-8; NWJP Amicus Br. at 7-8. This inaccurately characterizes the findings. The final agency order deals with violating the condition relating to her son's contact with children and findings that Ms. Hardee lacked characteristics necessary under WAC 170-296-0140 to be a child care provider. The condition on contact is objective. Moreover, thousand of home child licenses meet the regulation concerning necessary characteristics. Thus, the argument that the charges are "subjective" ignores the regulations, ignores the robust fact-finding

² Although the State disagrees with the holding in *Ongom*, that decision properly disapproves of the use of charges or outcomes to determine due process requirements on an ad hoc basis. *Ongom v. Dep't of Health*, 159 Wn.2d 132, 104 P.3d 29 (2006).

process, and ignores how Ms. Hardee's violation concerned a specific condition to address contact between children and her son.³

Amici cite no case where *Matthews v. Eldridge* requires an *ad hoc* approach to the burden of proof for licensing. Their arguments on this point are no reason to review the court of appeals ruling upholding the constitutionality of RCW 43.215.300(2).

2. Reputational Damage Alone Is Not A Basis For Challenging The Statutory Burden Of Proof

To justify a higher burden of proof, CARE/SEIU argues that child care licensing decisions may cause reputational damage, and that other actions that might damage a reputation use the clear, cogent, and convincing standard. However, case law shows that due process requires a higher burden of proof only when the state action affects a fundamental liberty interest. An adverse decision about a business or occupational license may have an incidental stigma, but that stigma does not compel a higher burden of proof.

The Department agrees that events such as termination of parental rights and involuntary commitment have been held to require clear, cogent, and convincing evidence, and that such events are stigmatizing. However, actions such as denaturalization and a finding of dependency

³ Amicus NWJP even suggests that leaving of a child unsupervised with a potentially dangerous individual is a "subjective" charge. NWJP Amicus Br. at 7-8.

have not, notwithstanding the stigmatizing effects of such decisions. *Vance v. Terrazas*, 444 U.S. 252, 100 S. Ct. 540, 62 L. Ed. 2d 461 (1980); *In re Chubb*, 46 Wn. App. 530, 536, 731 P.2d 537 (1987). Due process differences depend on whether there is a fundamental liberty interest at stake. For example, termination of parental rights involves severing a parent-child relationship, which completely extinguishes the fundamental liberty interest in raising one's children. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388 (1982). Similarly, involuntary commitment involves locking a person away from free society, sometimes for an indeterminate period, which curtails a person's fundamental liberty interest in freedom of movement. *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). Despite their stigmatizing consequences, dependency and denaturalization do not involve similar fundamental liberty interests, and thus due process does not require a higher burden of proof.

Slights to one's reputation, even by the government, are tolerated from a due process standpoint when proven by a preponderance of the evidence or less. Examples include bodily arrest and imprisonment pending trial on proof by probable cause⁴; imprisonment on probation or

⁴ U.S. Const. amend. IV.

sentencing violations by preponderance of the evidence or less⁵, and proof of paternity on a preponderance of the evidence.⁶ (Two of the three can cause an actual physical loss of liberty as well as damage to reputation.) Similarly, civil tort actions are often based on stigmatizing allegations, such as past assaults. In all these situations, the preponderance of evidence standard satisfies due process regardless of incidental effects on reputation.

Here, a preponderance of evidence supported the findings that Ms. Hardee violated conditions on her license imposed by DEL after she and DEL had information indicating that her son William was a danger to child care children. For example, the testimony of parent J.S. showed that she allowed William to diaper a young girl close in age to the child he admitted to molesting. Due process is satisfied where such facts are adjudicated to be more likely than not, notwithstanding the possibility of stigma to the licensee.

⁵ WAC 137-104-050(14); *In re Personal Restraint of McKay*, 127 Wn. App. 165, 171, 110 P.3d 856 (2005); *State v. Zeigenfuss*, 118 Wn.2d 110, 113-116, 74 P.3d 1205 (2003); *State v. Dahl*, 139 Wn.2d 678, 683, 990 P. 2d 396 (1999)

⁶ *Riviera v. Minnich*, 483 U.S. 574 (1987).

3. The Higher Standard of Proof for Teaching Licenses Reflects A Legislative Choice And Does Not Demonstrate a Constitutional Requirement For Child Care Licensees

CARE/SEIU cites to the clear, cogent, and convincing burden of proof used for the suspension or revocation of teaching licenses. CARE/SEIU Amicus Br. at 4. In doing so, CARE/SEIU fails to inform the Court that the same agency rule adopts a preponderance of evidence standard for some teacher disciplines. WAC 181-86-170(3).

The teacher discipline standards do not support the amici because the teacher standards reflect a legislative decision, not a judicial determination about due process. Similarly, the requirements of RCW 43.215.300(2) reflect a legislative decision about the risks and interests at stake in home child care licensing, and how to accommodate the interests of providers while protecting vulnerable, young, and often non-verbal children. In both situations, due process accommodates legislative choice concerning the certainty in licensing decisions.

B. Inconsistencies In Burden of Proof Cases After *Nguyen* Reflect That Decision And Do Not Demonstrate Error In This Case

The amici argue that the *Nguyen* and *Ongom* decisions compel the Court to accept review and provide guidance to courts in cases addressing the burden of proof. NWJP Amicus Br. at 2-3; CARE/SEIU Amicus Br. at 4-5. *Nguyen* and *Ongom* did not address a statutory burden of proof

such as RCW 43.215.300(2) or the strong presumption of constitutionality for statutes. Furthermore, neither case considers the public interests involved in home child care licenses. Therefore, although amici analogize a medical professional licensee to a home child care license, the analogy is superficial and does not address the constitutional factors governing due process. *See generally* Response Br. at 23-28 (showing that *Nguyen* and *Ongom* are inconsistent with *Matthews v. Eldridge*).

NWJP first faults Division I for distinguishing *Nguyen* in *Eidson v. Dep't. of Licensing*, 108 Wn. App. 712, 32 P.3d 1039 (2001), arguing that the court should not distinguished between threats presented by doctors versus real estate appraisers. NWJP Amicus Br. at 3. *Eidson*, however, followed the reasoning set forth in *Nguyen* itself. For example, the court in *Eidson* compared the time and expense required to obtain a real estate appraiser license to that required to obtain a license to practice as a physician. The *Nguyen* opinion relied on the time and expense involved in becoming a physician to conclude that the clear, cogent, and convincing standard was applicable to revocation of a medical license. *Nguyen v. Dep't. of Health*, 144 Wn.2d 516, 527, 1029 P.3d 689 (2001). *Eidson* cited to the standards under which *Eidson's* license was revoked, harkening back to the statements in *Nguyen* that the charges there were "subjective and relative". *Id.*

Similarly, *Eidson* tried to accommodate the reasoning in *Nguyen* that discounted how a higher burden of proof would create a risk that incompetent physicians would be licensed, and instead argued that it would interfere with the public's access to physicians:

That the public has an interest in the competent provision of health care services lends even greater importance to the assurance against erroneous deprivation which a higher standard would promote, as ultimately the public is dependent upon the provision of such services, not their elimination.

Nguyen 144 Wn.2d at 534.

The Court of Appeals in *Ongom* also tried to follow the justifications offered in *Nguyen* by considering the different interests of a nursing assistant compared to a doctor. *Ongom v. Dep't. of Health*, 124 Wn. App. 935, 941-948, 104 P.3d 29 (2005). When this Court reversed, the majority opinion held only that Ms. Ongom's interest in her license were not distinguishable from Dr. Nguyen's interest in his license. The Court declined, however, to examine whether *Nguyen* itself was erroneous.⁷

Thus, if *Eidsen* and *Ongom* reflect confusion, that confusion originates in *Nguyen*. The amici's argument thus shows only that if

⁷ The reason given in *Ongom* for failing to address the due process analysis was that the State had not preserved the issue on appeal. *Ongom*, 159 Wn.2d at 137 fn. 3. That is not the case here, where the validity of *Nguyen* and *Ongom* was briefed and argued at every stage of review.

review is accepted, it should be to revisit *Nguyen* itself and to conclude that due process does not preclude the Legislature from authorizing a preponderance of evidence standard in an APA-type adjudicative proceeding concerning a license.

C. The Court Of Appeals Passing Reference To An Erotic Dancer Registration Is Not A Reason For Review By This Court

Amici argue that Division I improperly compared Ms. Hardee's family home child care license to that of an erotic dancer. CARE/SEIU Amicus Br. at 4-5; NWJP Amicus Br. at 4-5. Amici do not address the reason for the distinctions, both in terms of license type and license requirements. Both distinctions were discussed by Division I and amply supported by the record. It is not axiomatic that child care licensees can be simply compared with doctors or nursing assistants, as demonstrated by Division I's reasoned distinctions.

The first distinction between the professions covered by *Nguyen* and *Ongom* and family home child care licensees is that family home child care licenses are tied to a facility, not an individual. Unlike licensed doctors or even licensed nursing assistants, Ms. Hardee and other family home child care licensees are not free to practice child care at any location. Child care must be performed in the home that is licensed, and a majority of the child care licensing regulations apply to the home. *See*

WAC 170-296. No amount of training allows for the portability of a family home child care license, and it is rightfully classified by Division I as different in type from the licenses addressed in *Nguyen* and *Ongom*.

The second distinction is that child care providers (like the dancers) are not listed under RCW 18.118, the source of licensing for professions analyzed in *Nguyen* and *Ongom*. Again, the Court of Appeal's distinction is reasonable.

Review should not be granted to remedy an inferred insult to child care providers. The Department and the Legislature acknowledge the importance of child care providers to society. Indeed, the preponderance of evidence standard exists because of that important role: child care providers deal with children who are uniquely vulnerable and uniquely unable to protect themselves from inadequate providers.

D. The NWJP Amicus Brief Does Not Provide Any Reason For The Court To Accept Review Of The Petitioner's Argument That The Review Judge Exceeded Her Authority

Only the NWJP argues in support of the second issue in the Petition, where Ms. Hardee asks the Court to review whether the review judge violated RCW 34.05.464(4). NWJP Amicus Br. at 8-10. That statute authorizes the review judge to exercise all the powers of the presiding officer who makes an initial ruling in an adjudicative proceeding, requiring only "due regard" to the presiding officer's

opportunity to observe witnesses. NWJP does not demonstrate how the record shows any error with regard to RCW 34.05.464(4) or why this issue meets the criteria of RAP 13.4(b).

First, the NWJP brief starts from a flawed premise. It argues that *the Court of Appeals* failed to give “due regard” to the findings of fact made by the Administrative Law Judge issuing the Initial Decision in this case. NWJP Amicus at 8. NWJP thereby implies that the due regard requirement for reviewing officers alters the standards or focus of judicial review. *See* RCW 34.05.570(3) (review of adjudicative orders). NWJP Amicus at 9. Both arguments show how the NWJP brief is misdirected and misreads the APA. Under the APA, a court applies the standards of judicial review to a final agency order. *See Tapper v. Employment Sec. Dep’t.*, 122 Wn.2d 397, 404, 858 P.2d 494 (1993) (judicial review applies to final agency orders). In the context of RCW 34.05.464(4), this means simply that the reviewing court considers how the reviewing officer shows due regard to the presiding officer’s opportunity to observe the witnesses. Compare RCW 34.05.464 to RCW 34.05.570(3).

While a party seeking judicial review may allege a violation of procedural requirements such as RCW 34.05.464(4), the NWJP brief does not even identify where the review judge failed to give due regard to the ALJ’s observation of witnesses. Contrary to the implications and bare

assertions of NWJP, the Final Order included a careful analysis of the record. It included reasons for changing the ALJ's proposed findings. It included reasons for adopting additional findings on matters that the ALJ neglected. See Answer to Petition for Review at 12-14.

In the face of the Department review of the record showing the review judge's compliance with RCW 34.05.464(4), the NWJP offers no analysis to support its position. Moreover, NWJP recognizes that "the written expression of that due regard" is met when the review judge "explains the reasons and basis" for departing from the ALJ findings. NWJP Amicus Br. at 10. With this statement, NWJP confirms that there is no reason for the Court to review this issue, because the review judge's decision squarely meets NWJP's conditions.

The Department stands by its suggestion that if review is granted, it should be limited to the first issue in the Petition challenging the constitutionality of the DEL statute and the issue raised in the Answer asking whether *Nguyen* and *Ongom* should be reversed or limited. See Answer to Petition at 12-18. The petitioner and the amici NWJP do not identify any aspect of the ALJ's observation of witnesses that was not given due regard. Furthermore, the NWJP concedes that this statutory power of the review judge is met by written explanations and reasons for

making different and additional findings, which were given by the review judge in this case.

E. Nothing In The Record Shows That RCW 43.215.300(2) Impermissibly Discriminates Based on Sex And This Issue Cannot Be Raised For The First Time By Amici

CARE/SEIU argue that applying a preponderance burden to child care licensing while requiring clear, cogent, and convincing evidence for health care providers constitutes impermissible discrimination based on sex. They cite Bureau of Labor Statistics reports noting that most child care providers are women. SEIU/CARE Amicus Br. at 8-10.

This argument has not been raised by either of the parties who have been litigating this case for the past three years. It is not appropriately raised by amicus at this stage of the proceedings. This type of argument cannot be analyzed on a record devoid of facts or prior argument on this issue.

IV. CONCLUSION

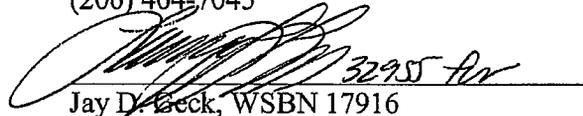
The amici do not show that the Petition meets the criteria of review in RAP 13.4(b). For reasons stated above and in the Answer to Petition for Review, the Court should deny review. Alternatively, if review is accepted, the Court should limit review to the Petitioner's challenge to RCW 43.215.300(2) and whether the *Nguyen* and *Ongom* decisions should be overruled or limited.

RESPECTFULLY SUBMITTED this 5th day of January, 2010.

ROBERT M. MCKENNA
Attorney General



Patricia L. Allen, WSBN 27109
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7045



Jay D. Beck, WSBN 17916
Deputy Solicitor General
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-2697

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JAN -5 PM 3: 39

BY RONALD R. CARPENTER

CLERK

NO. 83728-7

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE WELFARE OF
STATE OF WASHINGTON
DEPARTMENT OF EARLY
LEARNING,

Respondent,

v.

KATHLEEN HARDEE,

Petitioner.

DECLARATION OF SERVICE

I, Patricia A. Kelley, declare as follows:

I am a Legal Assistant employed by the Washington State Attorney General's Office. On January 5, 2010, I sent a copy of: **State's Answer to Amici Curiae Childcare Advocate Resource and Education, Service Employees International Union 925, and Northwest Justice Project; and Declaration of Service** via US mail to:

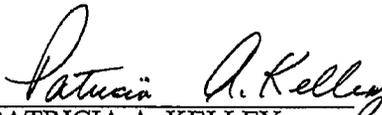
1. Carol Farr, Leonard Moen & Associates, 947 Powell Avenue SW Suite 105, Renton, WA 98057-2975 and;
2. Philip Albert Talmadge, Talmadge/Fitzpatrick, 18010 Southcenter Parkway, Tukwila, WA 98188-4630.
3. Sidney Charlotte Tribe, Talmadge/Fitzpatrick, 18010 Southcenter Parkway, Tukwila, WA 98188-4630.
4. Alberto Casas, Joy Ann Von Wahlde, Millicent Newhouse,

Northwest Justice Project, 401 Second Avenue S. Suite 407, Seattle,
WA 98104.

5. Joan K. Mell, III Branches Law, PLLC, 1033 Regents Blvd., Suite
101, Fircrest, WA 98466.

I declare under penalty of perjury, under the law of the State of
Washington that the foregoing is true and correct.

DATED this 5th day of January, 2010, at Seattle, Washington.


PATRICIA A. KELLEY
Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Kelley, Patricia (ATG)
Cc: Allen, Patricia L. (ATG); Geck, Jay (ATG)
Subject: RE: Cause No. 83728-7

Rec. 1-5-10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kelley, Patricia (ATG) [mailto:PatriciaK@ATG.WA.GOV]
Sent: Tuesday, January 05, 2010 3:33 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Allen, Patricia L. (ATG); Geck, Jay (ATG)
Subject: Cause No. 83728-7

Good afternoon, attached please find a copy of State's Answer and Declaration of Service. This is in reference to the following case.

Case No.: 83728-7

<<Scanned Answer 1.5.10.pdf>> <<Signed Declaration of Service 1.5.10.pdf>>

Contact Name: Patricia Kelley

Attorney Names: Patricia Allen and Jay Geck

Attorney Bars #: 27109 and 17916

Attorney e-mail: PatA1@atg.wa.gov and JayG@atg.wa.gov

If you have any questions or trouble opening the attachment, please feel free to contact me.

Patricia A. Kelley, LS 2
Attorney General's Office
Seattle Social & Health Services Division
(206) 464-5334
patriciak@atg.wa.gov

Patricia A. Kelley

LS 2

Attorney General's Office

SHS-Seattle

(206) 464-5334