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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

No. 32223-8 III

Yakima County Superior Court Cause No. 12-2-03162-1

MATTHEW A. NEWMAN, an incapacitated adult; and RANDY
NEWMAN AND MARLA NEWMAN, parents and guardians of said
incapacitated adult,

Respondent,

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a Washington State
government agency,

Petitioner.

**HIGHLAND SCHOOL DISTRICT NO. 203'S ANSWER TO BRIEF
OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION
FOR JUSTICE FOUNDATION**

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 ORIGINAL

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I. INTRODUCTION

In this case, certain coaches and an athletic director formerly employed by the Highland School District (“District”) have direct knowledge of the event or events triggering the Newman litigation. It is the alleged acts and omissions of these former employees while employed by the District that the plaintiffs claim give rise to vicarious corporate District liability for the injuries and damages sustained thereby. The issue before this Court is whether the District’s corporate attorney-client privilege protects from disclosure to the Newmans’ counsel the content of certain communications between these former employees and the District’s counsel.

There is no question that under Washington law had these individuals remained employed by the District, counsel’s communications therewith would be privileged. (*Youngs v. Peacehealth*, 179 Wn.2d 645, 316 P.3d 1035 (2014); *Wright v. Group Health Hospital*, 103 Wn.2d 192, 691 P.3d 564 (1984)). The only fact that the plaintiffs and the amici contend makes such communications not confidential is the fact that the former coaches and athletic director were no longer employed by the District when the communications occurred. That fact, however, should not be the deciding factor in this case. The deciding factor should be whether the purpose for which the corporate attorney-client privilege was extended to

low- and mid-level employees in the first place under federal law, as enunciated in *Upjohn v. U.S.*, 449 U.S. 383 (1981), and then under Washington State law by this Court's express adoption in *Youngs* of the reasoning underlying the *Upjohn* decision, continues with such former employees despite the discontinuation of their employment.

The ability to have confidential communications with these former District employees is entirely consistent with and furthers the very purposes for which the corporate attorney-client privilege was extended to employees who are not part of the District's control group, such as the District's Superintendent. These purposes include candid communications without the fear of disclosure thereof and the ability of corporate counsel to provide the District with sound legal advice, based in part upon the content of the communications with such former employees. As such, the District's counsel's communications therewith, that were not previously protected by a direct attorney-client privilege, which the trial court understood were completely protected from disclosure, also should be protected from disclosure to opposing counsel.

A. THIS COURT SHOULD ADOPT A MODIFIED VERSION OF THE *UPJOHN* TEST.

Both the United States and Washington Supreme Courts have held that the scope of a corporation's attorney-client privilege must be evaluated

using a flexible test, not a bright line test. (See *Upjohn*, 449 U.S. at 383 (1981); *Youngs*, 179 Wn.2d at 645). In *Upjohn*, the Supreme Court held that extension of the attorney-client privilege in the corporate context must be decided on a case-by-case basis. (*Upjohn*, 449 U.S. at 396-97). Thirty one years ago, in *Wright*, this Court approvingly cited to *Upjohn*'s flexible test. (*Wright*, 103 Wn.2d at 192). Just last year, in *Youngs*, this Court, in addressing the conflict between the physician-patient privilege and the corporate attorney-client privilege, adopted "a modified version of the *Upjohn* test . . ." (*Youngs*, 179 Wn.2d at 653).

Similar to the holding in *Youngs*, which balanced the competing interests advanced by the corporate attorney-client privilege and the physician-patient privilege, the District asks this Court to adopt a modified version of the *Upjohn* test that meets the context of the facts of the Newmans' personal injury case. (*Id.*). The context in the Newman case is that certain of the District's current and former corporate employees, including the former employees whose conduct is alleged to give rise to corporate liability, have direct, and in the case of the former head coach and his former assistant coaches, the sole District knowledge of the critical event or events triggering the plaintiffs' litigation.

In the context of the Newmans' personal injury lawsuit, a modified version of the *Upjohn* test that would extend the corporate attorney-client

privilege to former employees should consider at least: (1) whether the former employee was employed by the corporation at the time of the events triggering the litigation; and (2) whether the former employee has direct knowledge of the event or the events triggering the litigation. A third factor that could be included in a modified version of the *Upjohn* test is whether the alleged acts and omissions of the former employee(s) could make the corporation vicariously liable to the injured party. However, such a factor is necessarily subsumed in the two factors proposed by the District. Other factors could be considered in adopting a modified *Upjohn* test, but with respect to the facts of the Newman case, only the two proposed factors need be present to properly extend the privilege such that the underlying purposes and rationale for extending the corporate attorney-client privilege beyond the District's control group are met.

A modified version of the *Upjohn* test extending the corporate attorney-client privilege to communications with former employees under the facts of the Newman case is completely consistent with the rationale for the existing corporate attorney-client privilege law in Washington, i.e., confidential communications for the purpose of providing sound legal advice. And, like the holdings in *Youngs* and *Wright*, such an extension appropriately obligates both opposing counsel and corporate counsel to act ethically.

In this latter regard, the *Youngs* holding requires that corporate counsel not invade the confidentiality of the privileged communications that the plaintiff had with his or her treating physician. The holdings in *Wright* and *Youngs* likewise require that plaintiff's counsel not invade the confidentiality of the communications that corporate counsel had with currently employed corporate employees who are allowed to be interviewed ex parte by opposing counsel, including treating physicians employed by the corporation who have direct knowledge of the events at issue.

An extension of the privilege to former corporate employees in the context of the facts of the Newman case merely obligates opposing counsel to not make inquiry into confidential communications corporate counsel has had with the former employees. Such an obligation is no different than the obligation that already exists with respect to the limitations upon opposing counsel's ex parte communications with currently employed non-managing corporate employees.

1. The Modified Version of the *Upjohn* Test Furthers the Purpose of the Attorney-Client Privilege.

"The attorney-client privilege 'is the oldest of the privileges for confidential communications known to the common law.' Its aim is to 'encourage full and frank communication between attorneys and their clients and thereby promotes the broader public interests in the observance

of law and the administration of justice,”” (*Youngs*, 179 Wn.2d at 650 (citing *U.S. v. Jicarilla Apache Nation*, -- U.S. --, 131 S. Ct. 2313, 180 L. Ed .2d 187 (2011) (quoting *Upjohn*, 449 U.S. at 389))). “[T]he privilege is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which **assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure.**” (*Upjohn*, 449 U.S. at 389 (quoting *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888); emphasis supplied)). “[T]he privilege exists to protect not only the giving of professional advice to those who can act on it **but also the giving of information to the lawyer to enable him to give sound and informed advice.**” (*Id.* at 390 (citations omitted; emphasis supplied)). “The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer’s being fully informed by the client.” (*Id.*) The “privilege rests on the need for the advocate and counselor to know all that relates to the client’s reasons for seeking representation if the professional mission is to be carried out.” (*Id.* at 389 (quoting *Trammel v. United States*, 445 U.S. 40, 51 (1980))). Understandably, “[T]he attorney-client privilege is, perhaps, **the most sacred of all legally recognized privileges, and its preservation is**

essential to the just and orderly operation of our legal system.” (*U.S. v. Bauer*, 132 F.3d 504, 510 (9th Cir. 1997); emphasis supplied).

The “attorney-client privilege facilitates the full development of facts essential to the proper representation of the client and encourages laymen to seek early legal assistance.” (*Youngs*, 179 Wn.2d at 662 (citations and internal quotations omitted)). The corporate attorney-client privilege is no different. As this Court noted in *Youngs*, “in the context of corporate liability, low- and mid-level employees might be the only source of information relevant to legal advice, since they can, ‘by actions within the scope of their employment, embroil the corporation in serious legal difficulties.’” (*Id.* (quoting *Upjohn*, 449 U.S. at 391)). Unless corporate counsel’s communications with such employees remain confidential, the “corporate counsel ‘may find it extremely difficult, if not impossible, to determine what happened’ to trigger potential corporate liability.” (*Id.* (citing *Upjohn*, 449 U.S. at 392)). If the privilege is too limited, the corporate counsel faces “a ‘Hobson’s choice’ between engaging in potentially incriminating communications with low level [current and/or former] employees, on the one hand, and foregoing access to the information those [current and/or former] employees might provide, on the other.” (*Id.* (citing *Upjohn*, 449 U.S. at 391; *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 608 (8th Cir. 1978))).

“The *Upjohn* ‘rationale applies to the ex-employees . . . [because] [f]ormer employees, as well as current employees, may possess the relevant information needed by corporate counsel to advise the client . . .’” (*In re Allen*, 106 F.3d 582, 605 (4th Cir. 1997) (quoting *In re Coordinated Pretrial Proceedings in Petroleum Prod. Antitrust Litig.*, 658 F.2d 1355, 1361 n. 7 (9th Cir. 1981))). In some circumstances, like the circumstances in the Newman case, a corporation’s former employees may be the “only source of information relevant to legal advice,” because their actions allegedly triggered the corporate liability. (*Youngs*, 179 Wn.2d at 662.).

The *Youngs* Court pointed out that “the *Upjohn* Court did not articulate a fixed set of criteria by which to determine what specific conversations with lower-level employees must remain privileged in order to protect those values.” Instead, it “identified specific factors as relevant to its decision in that case, . . . [and] expressly ‘declin[e] to lay down a broad rule . . . to govern all conceivable future questions of corporate attorney-client privilege.’” (*Id.* at 663-64 (footnote omitted) (citing *Upjohn*, 449 U.S. at 386)). **“*Upjohn*’s reasoning implies a limiting principle. This principle follows from *Upjohn*’s central policy concern, which is to facilitate frank communication about alleged wrongdoing.”** (*Id.* at 664 (citing *Upjohn*, 449 U.S. at 390) (emphasis added)).

The District's request for extending the corporate attorney-client privilege to former employees under the facts of this case is entirely consistent with this limiting principle, not contrary to it, as urged by the WSAJF. Notably, with full understanding of the need for a strict application of the privilege, the attorney-client privilege was extended by this Court in *Youngs* to currently employed corporate employees because such an extension is consistent with the purposes for the existence of the corporate attorney-client privilege. It is no different under the facts of the Newman case. The extension of the privilege to former employees under the circumstances of the facts of the Newman case serves the very purpose for which the privilege exists. In *Youngs*, this Court adopted *Upjohn's* reasoning, adopted a modified version of the *Upjohn* test, and approvingly cited to previous cases that "endorsed *Upjohn's* flexible test, praising it for furthering the laudable goals of the attorney-client privilege." (*Id.* at 662 (citing *Wright*, 103 Wn.2d at 201-02)). Extending the privilege to former corporate employees under the facts of the Newman case meets the flexible test rationale and furthers the laudable goals of the attorney-client privilege.

WSAJF expressed concern regarding the breadth of the privilege, and the lack of discoverability of privileged communications. These concerns are not the determining factors as to whether the privilege should be extended to former corporate employees. Such concerns already have

been balanced with the need to have candid and confidential communications and are necessarily inherent in the privilege. In *Youngs*, this Court openly acknowledges that communications subject to the corporate attorney-client privilege are not discoverable, having stated that “protection against compelled disclosure was consistent with the underlying purposes of the attorney-client privilege.” (*Youngs*, 179 Wn.2d at 661.)

Another WSAJF concern is whether the former employees are any different than third party witnesses. Here, the former coaches and athletic director clearly are different. Unlike a third party witness, the District’s former employees allegedly engaged in conduct triggering the litigation and the potential corporate liability. Although not named as parties, they easily could have been so named. The former employees also have an interest in protecting their personal and professional reputations, and the former employees may feel wrongfully accused of harming the Newmans. No such interest exists with respect to a third party witness.

Because of the interest in protecting their reputations, the employees have a personal interest in maintaining the confidentiality of the communications in addition to the interest of the corporation in maintaining the confidentiality of communications with its former employees.¹ For fear

¹ Current and former employees of governmental entities are unlike third party witnesses and have incentives for protecting privileged communications with corporate counsel,

of becoming a named party or damaging his or her reputation, the former employee may be afraid to communicate absent the existence of the privilege and the confidentiality it guarantees. If communications between former employees and corporate counsel are always discoverable, then it may have a chilling effect on the former employee's candidness and stunt the corporate counsel's ability to investigate and provide legal advice. Such a result is completely contradicted by the purpose of the attorney-client privilege.

2. The Modified Version of the *Upjohn* Test Conforms With Existing Law Regarding Corporate Attorney-Client Privilege and Presumes All Counsel Will Act Ethically.

A modified version of the *Upjohn* test as proposed by the District would not change the purpose for the existing law regarding the corporate attorney-client privilege. Here, the District's former employees communicated with corporate counsel after the termination of their employment. Other than the termination of their employment, there is not one single fact that nullifies any of the original purposes for which the corporate attorney-client privilege would have been extended to them had they remained employed.

because under RCW 4.96.041, if the employee becomes a named party, the governmental entity may be obligated to defend the action.

Pursuant to existing Washington law as set forth in *Wright* and *Youngs*, attorneys are expected to comply with their ethical obligations when communicating with current “non-managing” corporate employees and treating physicians who are corporate employees. That is, under the principle and holdings in the *Wright* and *Youngs* cases, plaintiff’s counsel may conduct ex parte interviews of non-managerial employees and corporate counsel may conduct ex parte interviews of treating physicians who are corporate employees. However, neither sides’ counsel may inquire into privileged communications, whether the privilege be the physician-patient privilege or the corporate attorney-client privilege. The modified test proposed by the District with respect to former corporate employees does not anymore impede counsel’s efforts to determine the facts of the case than do the interview restrictions necessarily implied in *Wright* and clearly addressed in *Youngs*.

WSAJF asserts that denying the privilege’s application to former employees has the beneficial effect of encouraging counsel to avoid improperly influencing witnesses. (*See* Brief of Amicus Curiae Washington State Association of Justice Foundation at 19, No. 90194-5 (Review Granted August 26, 2014)). Contrary to WSAJF’s implications, this Court’s holdings in the *Wright* and *Youngs* cases do not rest upon the presupposition that counsel for either the plaintiff or the defendant will

attempt to unethically influence the corporate witnesses they are allowed to interview. In fact, even more fundamentally, if the risk of improperly influencing the testimony of a client was the critical factor underlying the existence of the attorney-client privilege, then the privilege would not exist at all. Clearly, counsel for an individual has the same potential to attempt to unethically influence the testimony of his or her client as does counsel for a corporation. Yet, despite the potential risk of an attorney improperly influencing a witness's testimony, Washington recognizes both the attorney-client and corporate attorney-client privileges and specifically allows opposing counsel to conduct ex parte interviews of non-managing employees and treating physicians who are corporate employees.

B. A FLEXIBLE MODIFIED VERSION OF THE *UPJOHN* TEST IS CONSISTENT WITH THE FEDERAL COURTS' APPROACH TO CORPORATE COUNSEL'S COMMUNICATIONS WITH FORMER EMPLOYEES.

Many federal courts have held that the *Upjohn* flexible test applies to communications with both current and former corporate employees. (See *Hanover Insurance Company v. Plaquemines Parish Government*, 304 F.R.D. 494 (E.D. La. 2015)).² For instance the Fourth Circuit stated “[t]he Supreme Court in *Upjohn* left open the question of whether the scope of

² In *Hanover*, the Eastern District of Louisiana relied on federal and state case law to determine how Louisiana law would deal with corporate attorney-client privilege and former employees.

attorney-client privilege extends to include communications with former, as well as current, employees” and quoted Chief Justice Burger’s concurring opinion that the Supreme Court should have laid down a general rule that “a communication is privileged at least when, as here, an employee or former employee speaks at the direction of the management with an attorney regarding conduct or proposed conduct within the scope of employment.” (*In re Allen*, 106 F.3d at 605 (citing *Upjohn*, 449 U.S. at 394, 402-03 (Burger, C.J., concurring))). “Most lower courts have followed the Chief Justice’s reasoning and granted the privilege to communications between a client’s counsel and the client’s former employees.” (*Id.* (citations omitted)). “Those courts that have denied the privilege to communications between the client’s attorney and former employees have generally been following state law or concluded that the former employee had ceased being employed by the client **before the relevant conduct occurred.**” (*Id.* at 606 (emphasis added)).

The recently decided *Hanover* case summarized the decisions by “the relatively small number of courts [that] have considered whether to extend *Upjohn* to former employees.” (*See Hanover*, 304 F.R.D. at 498). “[O]nly two circuit courts have addressed the issue. Both the Ninth and the Fourth Circuits adopted the Burger concurrence” and applied the *Upjohn* test to communications between corporate counsel and former employees.

(*Id.* at 498 (footnote omitted) (citing *In re Coordinated*, 658 F.2d 1355, 1361 n. 7); *In re Allen*, 106 F.3d 582, 606). “Additionally, it appears that every federal court to address the issue, with the exception of a single district court decision in 1985, has held that the privilege extends to former employees in certain contexts.” (*Id.* 498-99 (footnote omitted)).³ A flexible modified version of the *Upjohn* test is consistent with the federal courts’ approach to corporate attorney-client privilege and former employees.

Largely ignoring cases like *In re Allen* and *Hanover*, WSAJF argues that *Upjohn* and *Youngs* “presuppose the existence of an employment relationship at the time when the communications with corporate counsel occur.” (Brief of Amicus, *supra.* at 12). Contrary to the assertions of WSAJF, neither *Youngs* nor *Wright* presupposed the existence of an employment relationship as a determinative factor in this Court’s respective holdings therein. That the employees were still employed by the corporate defendants, particularly in *Youngs*, was just a fact in those cases. Like the

³ The Eastern District of Louisiana cites the following cases: *Peralta v. Cendant Corp.*, 190 F.R.D. 38 (D.Conn. 1999) (holding that the privilege applied to former employees); *Infosystems, Inc. v. Ceridian Corp.*, 197 F.R.D. 303 (E.D.Mich. 2000) (same); *Surlis v. Air France*, No. 00-5004, 2001 WL 815522 (S.D.N.Y. July 19, 2001) (same); *Wade Williams Distribution, Inc. v. Am. Broad. Companies, Inc.*, No. 00-5002, 2004 WL 1487702 (S.D.N.Y. June 30, 2004) (same); *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co.*, 232 F.R.D. 103 (S.D.N.Y. 2005) (same); *Weber v. FUJIFILM Med. Sys., U.S.A.*, No. 10-401, 2011 WL 3163597 (D.Conn. July 27, 2011) (same). *But see Clark Equipment Co. v. Lift Parts Mfg. Co. Inc.*, No. 82-4585, 1985 WL 2917 (N.D.Ill. Oct. 1, 1985) (refusing to extend *Upjohn* to former employees).

former coaches and athletic director in the Newmans' case, the treating physician(s) in *Youngs* easily could have no longer been employed with *Peacehealth* and the conflict between the physician-patient privilege and the corporate attorney-client privilege could have arisen in that context. In addition, *Wright's* fact pattern includes both current and former corporate employees. (*Wright*, 103 Wn.2d at 193-94).

The emphasis should not be on the timing of the interview, as that is an irrelevant fact. What is relevant, however, is whether the timing of the employment coincides with the occurrence of the conduct at issue and whether the former employees have direct knowledge of the event or events which potentially could trigger corporate liability. If these relevant factors are met, the purpose of extending the corporate attorney-client privilege to former employees is achieved and the communications by corporate counsel therewith should be privileged.

WSAJF also argues that the attorney-client privilege cannot protect communications between former employees and corporate counsel because a former employee does not have an obligation to keep his or her communications with corporate counsel confidential. This also is not a relevant consideration nor is it an accurate statement. The reason it is not relevant is because both an individual client, as well as a corporate client, may waive the privilege. (*Dietz v. Doe*, 131 Wn.2d 835, 850, 935 P.2d 611

(1997); *Sitterson v. Evergreen School Dist. No. 114*, 147 Wn. App. 576, 583, 196 P.3d 735 (2008) (citations omitted)).

If the ability to waive the privilege were the test for whether the privilege should exist, then the privilege simply would not exist because it always can be waived. Instead, the issue is whether the privilege should attach to certain communications between corporate counsel and former employees because, as a matter of law, such communications serve the very purpose of the existence of the attorney-client privilege, and the purpose for the extension of the privilege to non-managing low- to mid-level corporate employees.

Similarly, the application of the corporate attorney-client privilege does not turn on the existence of an employee's duties of loyalty, obedience, and due care. Whether the current or former employee is loyal, obedient, and/or careful is simply not pertinent. Nowhere do the cases say that privileged communications only exist if the corporate employee, current or otherwise, has been or was loyal, obedient, and careful. Indeed, it may be that the former employee was not loyal, obedient, or careful, and it may be that it was the actions thereof that potentially could give rise to vicarious corporate liability. Because the purpose of the privilege is to encourage full and frank communications between current and former corporate employees, and enable corporate counsel to determine what exactly

occurred to trigger potential corporate liability, the privilege should extend to protect communications with such a person as the underlying purposes of the privilege is satisfied.

WSAJF's reference to the Restatement (Third) of the Law Governing Lawyers § 73(2) & Comment e actually undermines WSAJF's argument for a bright line test. In fact, Comment e demonstrates the need to adopt a flexible test and identifies certain situations where a former corporate employee's communications with corporate counsel should be protected by the corporate attorney-client privilege. Here, the District is simply asking that the flexible test adopted by the United States and Washington Supreme Courts, as well as the Restatement, extend to the factual pattern existing in the Newman case.

Similarly, WSAJF's reliance on *Infosystems, Inc. v. Ceridian Corp.* is misplaced. (*Infosystems, Inc.*, 197 F.R.D. 303; Brief of Amicus, *supra* at 13-14). *Infosystems* does not support the adoption of a bright-line, no exception test for determining whether the corporate attorney-client privilege extends to former employees. (See *Hanover*, 304 F.R.D. at 498-99 n. 33). In the *Infosystems* case, the Court merely held that Sarla failed to meet its burden of proving why the communications with the deponent differed in some relevant way from the communications with any other third-party witness. Also, the deponent in *Infosystems* was never identified

as a person whose actions while a corporate employee could make the corporate employer vicariously liable for his actions. Instead, the *Infosystems* Court pertinently stated, “[C]ounsel’s communications with a former employee of the client corporation generally should be treated no differently from communications with any other third-party fact witness. Admittedly, **there are exceptions to this general rule.**” (*Infosystems, Inc.*, 197 F.R.D. at 306 (emphasis added)).⁴ Notably, the *Infosystems* Court never held there could not be more exceptions to the general rule than set forth in its opinion.

The *Infosystems* Court held that for post-employment communications to be privileged, the former employee and the corporate counsel’s communication must have “differed in some relevant way from counsel’s communications with any other third-party witness.” (*Id.*). As discussed herein, *supra.*, at 10, the District’s former employees, while employed, obtained direct knowledge of the events triggering the litigation and/or whose conduct allegedly triggers corporate liability, have interests

⁴ To the *Infosystems* Court, the following constituted exceptions to the general rule: (1) communications occurring prior to the termination of the period of employment; (2) situations where the former employee maintains a present connection or agency relationship to the client corporation; and (3) when a post termination of employment communication “concerns a confidential matter that was uniquely within the knowledge of the former employee when he worked for the client corporation . . .” (*Id.* at 306). It did not appear the *Infosystems* Court considered its list of exceptions exhaustive.

that greatly differ from a third-party witness who simply has knowledge of facts potentially relevant to the issues that are being litigated.

II. CONCLUSION

As set forth herein, the arguments and assertions of WSAJF do not support the adoption of a bright line rule that all communications between corporate counsel and former corporate employees are not privileged. However, if certainty is the objective, as urged by WSAJF, then this Court should adopt a rule that all communications by corporate counsel with former corporate employees are privileged. Instead, however, for the reasons set forth herein, the District respectfully requests this Court adopt a modified version of the *Upjohn* test for determining the application of the corporate attorney-client privilege in the context of the District's counsel's communications with former employees.

RESPECTFULLY SUBMITTED this 4th day of November, 2015.

NORTHCRAFT, BIGBY & BIGGS, P.C.



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CERTIFICATE OF SERVICE

I, Michelle A. Tomczak, declare under penalty of perjury of the state of Washington, that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within-entitled cause. I am an employee of Northcraft, Bigby & Biggs, P.C., located at 819 Virginia Street, Suite C-2, Seattle, WA 98101.

On November 4, 2015, I caused the original of foregoing to be sent to the Clerk of the Court of the Washington Supreme Court, *via email*, with copies thereof served *via email* on the following counsel of record:

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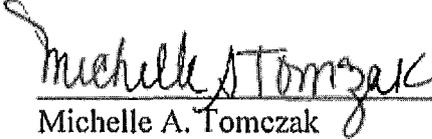
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DATED this 4 day of November, 2015, in Seattle,
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Subject: Newman v. Highland School District -- WA Supreme Court No. 90194-5 -- Answers to Briefs of Amicus Curiae

Attached for the Court's consideration, please find:

1. Highland School District No. 203's Answer to the Brief of Amicus Curiae American Civil Liberties Union of Washington;
2. Highland School District No. 203's Answer to the Brief of Amicus Curiae Washington Employment Lawyers Association; and
3. Highland School District No. 203's Answer to the Brief of Amicus Curiae Washington State Association for Justice Foundation.

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