

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Aug 29, 2014, 4:28 pm  
BY RONALD R. CARPENTER  
CLERK

---

RECEIVED BY E-MAIL

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

*In re the Detention of:*

M.W. and W.D.,

Respondents.

No. 90570-3

**ANSWER TO MOTION FOR  
DISCRETIONARY REVIEW**

---

**I. IDENTITY OF ANSWERING PARTY**

Respondents M.W. and W.D., by and through their appointed counsel, Christopher Jennings of the Pierce County Department of Assigned Counsel's Mental Health Advocacy Unit, file this answer to the State of Washington, Department of Social & Health Services' *Motion for Discretionary Review*.

**II. PROCEDURAL BACKGROUND**

M.W. and W.D. are respondents in Pierce County involuntary treatment civil commitment proceedings, cause nos. 13-6-00959-5 and 13-6-01092-5, respectively. On May 1, 2014 and May 15, 2014, respectively, the respondents filed motions in the Pierce County Superior

**RESPONDENTS' ANSWER TO MOTION  
FOR DISCRETIONARY REVIEW**

Page 1 of 6

ORIGINAL

Court seeking orders declaring the provision of RCW 71.05.320(3)(c)(ii), as enacted by the Washington legislature in ESSHB 1114, 2013 Laws of Washington c. 289, sec. 5, to be unconstitutional under both the Washington State and United States Constitutions, both on its face and as applied to them, as depriving them of liberty without substantive and procedural due process of law, denying them equal protection of the laws, and being unconstitutionally vague in its processes and requirements. On July 8, 2014, Pierce County Superior Court Commissioner Diana Kiesel entered her consolidated *Findings of Fact, Conclusions of Law, and Order Declaring Statute Unconstitutional*. [See Appendix.]

On July 23, 2014, DSHS filed motions for discretionary review in Division II of the Court of Appeals. On July 31, 2014, the Court of Appeals transferred the case to the Supreme Court pursuant to RCW 2.06.030. Upon receipt of the motions for discretionary review, the Supreme Court consolidated these cases under Supreme Court cause no. 90570-3.

### **III. STATEMENT OF RELIEF SOUGHT**

The respondents submit that the Supreme Court should grant discretionary review pursuant to RAP 2.3(b)(4), but not pursuant to RAP 2.3(b)(2).

**IV. GROUNDS FOR GRANTING DISCRETIONARY  
REVIEW PURSUANT TO RAP 2.3(b)(4)**

RAP 2.3(b)(4) allows for discretionary review if “[t]he superior court has certified, or all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.” The Superior Court’s *Order of the Court*, paragraph 3, reflects such a stipulation and contains the requisite certification that these factors are met. [Appendix at p. 6.]

Moreover, this same issue already has arisen in subsequent involuntary treatment civil commitment proceedings, and is likely to arise in numerous future proceedings. This issue needs to be definitively resolved by the Supreme Court to clearly define the law under these circumstances. In essence, the respondents agree with all of DSHS’s arguments as to why discretionary review should be granted pursuant to RAP 2.3(b)(4), as set forth in section V. A. of their motion.

**V. GROUNDS FOR DENYING DISCRETIONARY  
REVIEW PURSUANT TO RAP 2.3(b)(2)**

Respondents maintain that discretionary review pursuant to RAP 2.3(b)(2) should be denied because the Superior Court

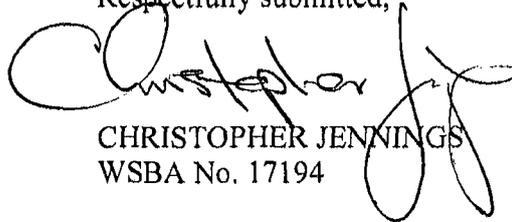
commissioner's conclusions of law and order declaring RCW 71.05.320(3)(c)(ii) unconstitutional are well founded in and wholly consistent with the body of state and federal case law concerning involuntary mental health civil commitment which has been developed over the past forty or more years. Moreover, inasmuch as discretionary review is appropriate under RAP 2.3(b)(4), discretionary review pursuant to RAP 2.3(b)(2) would be redundant.

## VI. CONCLUSION

For the foregoing reasons, DSHS's *Motion for Discretionary Review* should be granted pursuant to RAP 2.3(b)(4) only.

DATED: August 29, 2014.

Respectfully submitted,



CHRISTOPHER JENNINGS  
WSBA No. 17194

PIERCE COUNTY ASSIGNED COUNSEL  
Mental Health Advocacy Unit  
9601 Steilacoom Blvd SW, Bldg 25  
Lakewood WA 98498  
Telephone: 253-756-2310  
Email: cjennin@co.pierce.wa.us

**CERTIFICATE OF SERVICE**

*Christopher Jennings*, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On August 29, 2014, I served a true and correct copy of the foregoing *Respondents' Answer to Motion for Discretionary Review* on the following parties to this action, as indicated below:

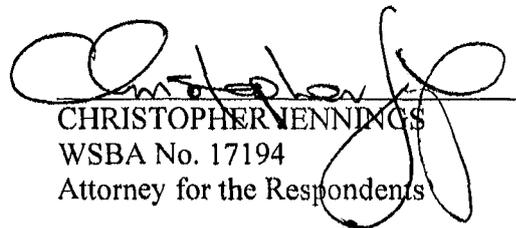
**Counsel for the State of Washington, Department of Social & Health Services**

Amber Leaders  
Assistant Attorney General  
Office of the Attorney General  
Social & Health Services Division  
P.O. Box 40124  
Olympia, WA 98504-0124

**By E-mail PDF:** AmberL1@atg.wa.gov; WSHteam@atg.wa.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED August 29, 2014, at Lakewood, Washington.

  
CHRISTOPHER JENNINGS  
WSBA No. 17194  
Attorney for the Respondents