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No. 94229-3

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

CERTIFICATION FROM  
THE UNITED STATES  
DISTRICT COURT FOR  
THE EASTERN DISTRICT  
OF WASHINGTON

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MARIANO CARRANZA and ELISEO MARTINEZ, individually and on  
behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

DOVEX FRUIT COMPANY,

Respondent/Defendant.

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**MOTION TO STRIKE PORTION OF DOVEX FRUIT  
COMPANY'S ANSWER TO AMICI BRIEFS**

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 ORIGINAL

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## I. INTRODUCTION

Petitioners/Plaintiffs Mariano Carranza and Eliseo Martinez and the proposed class members (“the workers”) respectfully ask the Court to strike the section of Dovex Fruit Company’s revised Answer to Amici Briefs that addresses the issue of retroactive application of the Court’s ruling. Dovex’s argument violates RAP 10.3(f) because it addresses a matter not raised in the briefs of amicus curiae nor relevant to the limited certified questions in this case. The Court previously refused to grant leave to Dovex to file an overlength answer that contained argument regarding retroactivity. Dovex now submits a revised brief that contains the same improper argument. And instead of properly shortening its overlength brief as required, Dovex appears to have reformatted it in a manner that runs afoul of RAP 10.4(a)(2)’s requirement that a brief “must appear double spaced.”

Alternatively, if the Court decides to address the issue of retroactivity even though it is beyond the scope of the certified questions and would benefit from supplemental briefing, the workers would like the opportunity to submit their arguments on this issue.

## **II. IDENTITY OF MOVING PARTY**

Petitioners/Plaintiffs Mariano Carranza and Eliseo Martinez, on behalf of the proposed class members, respectfully submit this motion.

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

The workers request that the Court strike the section of Dovex's revised Answer to Amici Briefs that addresses the retroactive application of the Court's ruling—specifically, pages 16 through 19—because the argument does not respond to any issue raised in the amicus briefs filed in the case and does not address the two narrow certified questions.

## **IV. FACTUAL BACKGROUND**

This case is before the Court on two narrow questions certified by the United States District Court for the Eastern District of Washington pursuant to RCW 2.60.020. Dkt. 41 at 2. In a letter dated August 9, 2017, the Court Commissioner granted the motions of six amici curiae to file briefs in this case. Four amicus briefs were submitted in support of the workers and two amicus briefs were submitted in support of Dovex. The Commissioner instructed the parties to file any answers to the amicus briefs by August 25, 2017.

On that date, Dovex submitted a twenty-seven-page brief in response to the amicus briefs and simultaneously moved for leave to file

the overlength answer. *See* Dovex’s Answer to Amici Briefs (Aug. 25, 2017); Dovex’s Motion for Leave to File Overlength Answer to Amici. The workers opposed Dovex’s motion because the majority of the overlength pages addressed the retroactive application of the Court’s forthcoming ruling—an issue that was not raised by any amici (or any party in the principal briefs) and is outside the scope of the two certified questions before the Court. On August 30, 2017, the Supreme Court Clerk denied Dovex’s request to file an overlength brief and directed Dovex to file a revised answer to the amicus briefs.

On September 5, 2017, Dovex submitted a revised Answer to Amici Briefs that contains the same argument regarding retroactivity. It also appears Dovex improperly altered the spacing in its brief so that its previously-submitted twenty-seven-page brief now fits within the twenty-page limit.

## V. ARGUMENT AND AUTHORITY

Rule of Appellate Procedure 10.3(f) and Washington case law require that an answer to an amicus brief “be limited solely to the new matters raised in the brief of amicus curiae.” *Gomez v. Sauerwein*, 180 Wn.2d 610, 624 n.9, 331 P.3d 19 (2014) (noting that petitioner’s argument in answer to amicus brief was improper under RAP 10.3(f) because it was not limited to new matters raised in the amicus brief). Dovex’s revised

Answer to Amici Briefs violates this requirement because it addresses the retroactive application of the Court's forthcoming ruling, which was not raised in any of the amicus briefs. This argument should be stricken. *See White v. Skagit Cty.*, 188 Wn. App. 886, 904, 355 P.3d 1178 (2015), *review denied*, 185 Wn.2d 1009, 366 P.3d 1245 (2016) (striking sections of petitioner's answer to amicus brief that responded to arguments made in respondent's answer to amicus brief rather than new matters raised by the amicus brief); *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 151 n.7, 94 P.3d 930 (2004) (striking portions of answer to amicus curiae briefs that contained arguments on issue not addressed by amici).

Dovex argues that a decision holding employers must separately pay piece-rate farm workers for time worked outside of piecework should only apply prospectively despite the presumption of retroactivity. *See* Dovex's Answer to Amici Br. at 16–19. But none of the amici curiae argues in favor of or against the retroactivity of a potential ruling in this case. Indeed, Dovex does not assert that any of the amici curiae have done so. Rather, Dovex vaguely suggests that the Attorney General's ("AG") amicus brief "opens the door to a prospective-only application" of the Court's ruling, allowing Dovex to address the issue. *Id.* at 16. In its brief, however, the AG does not address the issue of retroactive or prospective application. *See* AG Amicus Br. Dovex's apparent *interpretation* of the

AG's position as doing so is insufficient justification for adding new arguments to the answer.<sup>1</sup>

Nor is the issue of retroactivity presented by the two narrow issues before the Court on certified questions from the federal district court. Dkt. 40 at 2. Thus, neither party raised this issue in their principal briefs. "In answering federal certified questions, [this Court] do[es] not seek to make broad statements outside of the narrow questions and record before [it]." *Lopez Demetrio v. Sakuma Bros. Farms, Inc.*, 183 Wn.2d 649, 659, 355 P.3d 258 (2015) (quoting *Ruiz-Guzman v. Amvac Chem. Corp.*, 141 Wn.2d 493, 508, 7 P.3d 795 (2000)) (refusing to take position on retroactivity of decision because case was before Court on limited certified questions from federal district court).

Furthermore, the federal district court in this case explicitly declined to certify a similar issue—the retroactivity of this Court's ruling in *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015)—because it found that existing Washington law answers the question. *See* Dkt. 38 at 9–13. Indeed, there exists a strong presumption that this Court's interpretation of Washington statutes applies retroactively. *See Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 506,

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<sup>1</sup> Even if the AG had discussed retroactivity in its brief, this Court generally refuses to address issues raised only by amici curiae. *See State v. Taylor*, 150 Wn.2d 599, 603 n.2, 80 P.3d 605 (2003).

198 P.3d 1021 (2009) (“It is a fundamental rule of statutory construction that once a statute has been construed by the highest court of the State, that construction operates as if it were originally written into it [and] relates back to the time of the statute’s enactment.”).

Because this case is limited to the certified questions, this Court should strike Dovex’s argument regarding retroactivity raised for the first time in its answer to amicus briefs. *See Cummins v. Lewis Cty.*, 156 Wn.2d 844, 851, 133 P.3d 458 (2006) (granting motion to strike argument raised for the first time in a supplemental response to an amicus brief because the argument was not raised in the petition for review or response to the petition). If the Court decides to address the retroactive application of its ruling in addition to the certified questions, the workers would like the opportunity to submit their arguments on this issue. *See Fed. Way Sch. Dist. No. 210 v. Vinson*, 172 Wn.2d 756, 764, 261 P.3d 145 (2011) (noting that the Court previously granted leave to both parties to file supplemental briefs in lieu of striking answer to amicus brief).

## VI. CONCLUSION

Dovex’s revised Answer to Amici Briefs violates RAP 10.3(f) because it contains an argument that is not responsive to any new matter raised in the amicus briefs. Further, Dovex improperly uses its Answer to Amici Briefs to raise a new argument that it failed to raise in its principal

brief and that is not relevant to the limited certified questions before this Court. For these reasons, the workers respectfully request that the Court strike the portion of Dovex's answer that addresses the issue of retroactivity (pages 16 through 19).

RESPECTFULLY SUBMITTED AND DATED this 11th day of  
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## CERTIFICATE OF SERVICE

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Attached is Petitioners/Plaintiffs Motion to Strike Portion of Dovex Fruit Company's Answer to Amici Briefs to be filed in *Mariano Carranza, et al. v. Dovex Fruit Company*, Supreme Court Case No. 94229-3.

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