

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/23/2022 1:41 PM  
BY ERIN L. LENNON  
CLERK

No. 100969-1  
Court of Appeals No. 82511-9

---

SUPREME COURT OF THE STATE OF WASHINGTON

---

Karl Kersteter,

Appellant,

v.

Concrete School District,

Respondent.

---

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

---

VANDEBERG JOHNSON &  
GANDARA, PS  
H. Andrew Saller, Jr., WSBA #  
12945  
Attorneys for Respondent

**VANDEBERG JOHNSON & GANDARA, PS**  
1201 Pacific Avenue, Suite 1900  
P. O. Box 1315  
Tacoma, WA 98401-1315  
Telephone: (253) 383-3791

## TABLE OF CONTENTS

I.	IDENTITY OF RESPONDENT .....	1
II.	COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
	1. Did the Court of Appeals Correctly hold that Kersteter’s Claim for Additional wages is not Within the Scope of Employment-based Benefits Covered by RCW 49.44.170? .....	1
	2. Did the Court of Appeals Correctly Adhere to Controlling Authority in Affirming Dismissal of Kersteter’s Unjust Enrichment claim Where There was a Contractual Relationship Between the Parties? .....	1
III.	COUNTERSTATEMENT OF THE CASE .....	1
IV.	ARGUMENT FOR DENYING REVIEW .....	9
	A. The “Central Issue” of the Petition for Review is an Issue that was not Addressed by the Court of Appeals Because it was Moot. ....	9
	B. The Court of Appeals Decision is Correct and Consistent with the Decisions of this Court and Other Courts of Appeal on Applying the Intent of the Legislature.....	10
	C. The Court of Appeals Decision is not Inconsistent with cases Kersteter Relies upon that a Remedial Statute must be Liberally Construed to Achieve its Purpose.....	14
	D. The Court of Appeals Properly Affirmed Dismissal of Kersteter’s Unjust Enrichment Claim.....	16
	E. Kersteter has not Established that the Unpublished Opinion of the Court of Appeals Involves an Issue of Substantial Public Interest.....	18
V.	CONCLUSION.....	18

## TABLE OF AUTHORITIES

### CASES

<i>Associated Press v. Wash. State Legislature</i> , 194 Wn.2d 915, 920, 454 P.3d 93 (2019).....	12
<i>Brandt v. Impero</i> , 1 Wn. App. 678 at 682 463 P.2d 197 (1969).....	15
<i>Chandler v. Wash. Toll Bridge Auth.</i> , 17 Wn.2d 591, 604, 137 P.2d 97 (1943).....	17
<i>Chem. Bank v. Wash. Public Power Supply Sys.</i> , 102 Wn.2d 874; 691 P.2d 524 (1984).....	16
<i>Cockle v. Dep't. of Labor &amp; Indus.</i> , 142 Wn.2d 801, 808, 16 P.3d 583 (2001).....	12
<i>Columbia State Bank v. Invicta Law Grp. PLLC</i> , 199 Wn. App. 306, 318, 402 P.3d 330.....	17
<i>Crafts v. Pitts</i> , 161 Wn. 2d 16, 23, 162 P.3d 382 (2007).....	17
<i>Dep't. of Ecology v. Campbell &amp; Gwinn, L.L.C.</i> 146 Wn.2d 1, 43 P.3d 4 (2002).....	11
<i>McDonald v. Hayner</i> , 43 Wn. App. 81, 715 P.2d 519 (1986).....	17
<i>Schilling v. Radio Holdings, Inc.</i> 136 Wn.2d 152; 961 P.2d 371 (1998).....	15
<i>State v. Breazeale</i> , 144 Wn.2d 829, 837, 31 P.3d 1155 (2001).....	11
<i>State v. J.M.</i> , 144 Wn.2d 472, 480, 28 P.3d 720 (2001).....	11
<i>Timberline Air Serv., Inc. v. Bell Helicopter- Textron, Inc.</i> , 125 Wn.2d 305, 312, 884 P.2d 920 (1994).....	12
<i>Young v Young</i> , 164 Wn.2d 477, 484, 191 P.3d 1258 (2008).....	16, 17

### STATUTES

RCW 49.44.160 .....	15
RCW 49.44.170 .....	passim
RCW 49.44.170(3).....	9, 10
RCW 49.46 .....	10
RCW 49.46.010(7).....	13
RCW 49.48 .....	10

RCW 49.48.082(10).....	13
RCW 49.52.050 .....	15

**OTHER AUTHORITIES**

<i>Restatement of Restitution §1 (1937)</i> .....	16
---	----

**RULES**

RAP 13.4(b).....	14
RAP 13.4(b)(4) .....	18

## **I. IDENTITY OF RESPONDENT**

Respondent Concrete School District (“Concrete”) requests the Court to deny Karl Kersteter’s petition for review of the Court of Appeals unpublished decision issued March 14, 2022. The decision is attached as Appendix A to the Petition for Review.

## **II. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW**

- 1. Did the Court of Appeals Correctly hold that Kersteter’s Claim for Additional wages is not Within the Scope of Employment-based Benefits Covered by RCW 49.44.170?**
- 2. Did the Court of Appeals Correctly Adhere to Controlling Authority in Affirming Dismissal of Kersteter’s Unjust Enrichment Claim Where There was a Contractual Relationship Between the Parties?**

## **III. COUNTERSTATEMENT OF THE CASE**

In the spring of 2006, Concrete hired Kersteter as Transportation Supervisor for the 2006-2007 school year. CP 179. Before that, he had worked for 36 years for a third-party worker’s compensation administrator in Ohio until that position was eliminated. CP 240. He then sold property and casualty insurance as well as Medicare insurance policies until the Spring of 2017. CP 240-1.

Concrete is a very small school district. When Kersteter was Transportation Supervisor, the total annual enrollment for grades K-12 was less than 540 students. CP 179. Consequently, the Transportation department was also very small. It never had more than nine busses and ten part-time drivers. CP 179.

When Barbara Hawkings became superintendent of Concrete in 2006, she reviewed information on what other school districts of comparable size, demographics and location paid their Transportation Supervisors and whether those positions were full or part-time. CP 179-80. Based on that information and the requirements for Concrete, she determined the amount of salary for the Transportation Supervisor and determined that the Transportation Supervisor position should be part-time, not full-time. CP 274. She stated in her declaration there was no other reason for classifying the job as part-time. CP 180.

As required by statute governing public school employees, Concrete and Kersteter entered into one-year contracts for his work as Transportation Supervisor for the school years 2006-2007 through 2017-2018. CP 180. While working as Transportation Supervisor, Kersteter also served as the Athletic Director for four years. CP 180-81. His contracts for the academic years 2013-2014 through 2015-2016 identified his position as Transportation Supervisor/Athletic director. CP 157-62,180-181. For the 2016-2017 school year, Kersteter had separate contracts for

Transportation Supervisor and Athletic Director. CP 181. He did not make any claims related to his work as Athletic Director in this lawsuit.

Concrete provided Kersteter with benefits that included vision and dental insurance and paid leaves. CP 175. Kersteter declined medical insurance because he was on Medicare. CP 181. Kersteter received the same benefits as full-time employees except that, consistent with other part-time employees, the amount of his illness, injury and emergency leave; family leave; personal leave; bereavement leave; and judicial leave were prorated. CP 181. For example, in 2012-2013 Kersteter's leave benefits were based on a .5 FTE. CP 163 Kersteter stipulated to dismissal of his claims related to leave benefits.

In his contracts for 2013-2014, 2014-2015 and 2015-2016, the number of hours was increased to "five hours or as arranged" and the leave benefits were prorated at .625 FTE. CP 157-163. In the 2013-2014 contract, the number of days worked was reduced to 204 at Kersteter's request and remained at that level for his subsequent contracts. CP 153-61, 274.

In 2016-2017, Kersteter's contract for Transportation Supervisor had an increase of hours to "6 hours or as arranged." CP 155-56. His pay as Transportation Supervisor was \$33,537, but he also had a separate contract for his work as Athletic Director. CP 155-56. Kersteter chose not to continue as Athletic

Director at the end of that school year. CP 181. Kersteter's contract for 2017-2018 school year was solely for work as Transportation Supervisor. His stated hours were "6 hours a day or as arranged" and his salary was increased to \$34,540. CP 153-54. Kersteter's job as Transportation Supervisor was salaried, exempt. He was not required to work specific hours and he did not record or report the hours he worked. CP 180.

In his first year as Transportation Supervisor, Kersteter believed he worked more than he agreed to in his contract. CP 243. He entered into the successive contracts with the belief that his position should have been more than part-time. CP 243. Although he wanted more pay than what the contracts provided, he agreed to them for the first seven years (2006 through 2012) because "I was naïve, thinking, well next year it will be different." CP 244. After that, he realized that his work was by his contract and that was what he was going to do. CP 244. Kersteter was paid all the compensation that he agreed to in the contracts. CP 245. Despite agreeing to the terms of each contract and accepting his salary, Kersteter now freely admits that he always intended to sue for more wages. Pet. for Rev., p.5.

While Kersteter worked as Transportation Supervisor, he maintained his license as a bus driver and filled in as a substitute driver when one of the regular part-time drivers was absent. CP 181. Although Kersteter did not keep track of his hours as



Transportation Supervisor, he did record his hours when he worked as a substitute bus driver. CP 181. He was paid an additional amount for that work based on the number of hours he reported and the standard wage scale for the regular bus drivers. CP 181. Kersteter also continued to work for United Healthcare, selling Medicare policies until June 2017. CP 241. He does not have any records showing the time he spent working for United Healthcare while he was simultaneously under contract with Concrete. CP 241-42.

In the fall of 2017, rather than fulfilling his contract. Kersteter notified the new Superintendent, Wayne Barrett, that he intended to retire effective December 31, 2017. CP 228. After receiving Kersteter's notice, Superintendent Barrett began looking for a new Transportation Supervisor. Recognizing that it would be very difficult to find someone for that position in the middle of the school year, Barrett exercised his discretion and revised the job description of Transportation Supervisor to full-time in order to attract more applicants. CP 229.

The following year, Superintendent Barrett further modified the position by dividing the Transportation Supervisor duties and adding them to work already being performed by two other Concrete employees. CP 229. In that arrangement, one employee worked as both the Food Services Director and Transportation

Supervisor and the other employee worked as Maintenance Director and Transportation Supervisor. CP 229.

On January 17, 2018, less than three weeks after he retired, Kersteter filed a wage complaint with the Department of Labor & Industries. In that complaint, Kersteter alleged that he worked more hours than he was paid for from July 1, 2006 until September 1, 2017. CP 247. Kersteter testified that he did not include the time he worked in the fall of 2017 in his wage claim because he did not work more than the contracted number of hours during that time. CP 247. He completed all of his work in those hours. CP 229.

The Department of Labor & Industries investigated the complaint and issued a Determination of Compliance, which found that Concrete had paid Kersteter in accordance with his contracts and that he was not owed any additional compensation.

Kersteter then sued Concrete, alleging he was entitled to overtime under the Fair Labor Standards Act and the Washington Minimum Wage Act. CP 7. Additionally, he alleged that under the doctrines of unjust enrichment and quantum meruit, he was owed additional compensation for his work as Transportation Supervisor. CP 8.

In March 2020, Kersteter amended his complaint. The amended complaint no longer included claims under the Fair Labor Standards Act, the Washington Minimum Wage Act and the

Washington Rebate Act. CP 13-21. Kersteter added a claim under RCW 49.44.170 that Concrete improperly classified his position as part-time in order to avoid paying full-time benefits. His amended complaint seeks only “the value of unpaid benefits” that he claims were denied under RCW 49.44.170. CP 19. He did not claim additional wages under that statute.

As a salaried exempt employee, Kersteter was not part of a collective bargaining unit. CP 85. Kersteter’s salary was based on the contracts he agreed to. There is no state law or district policy which would have given Kersteter more pay if his job had been classified as full-time. CP 85. The amount of pay for Kersteter’s position was within the discretion of the superintendent, subject to the budget parameters established by the School Board and then Board approval. CP 84.

Kersteter’s retirement benefits are set by the Washington State Department of Retirement Systems. CP 85. Kersteter was part of the School Employee Retirement Systems Plan 3. CP 89. That plan includes a defined contribution component and a defined benefit component. CP 89. The defined contribution is the amount that each employee chooses to defer from their pay and contribute to their retirement. The amount of the employee’s contribution to their own account does not change based on whether their job is classified as full or part-time. CP 89.

The retirement payment that Kersteter receives under the defined benefit component is calculated by the Washington State Department of Retirement Systems, using a formula based on his compensation and the number of service credits he earned during his employment. CP 89.

Under the Department of Retirement Systems statutes and regulations, an employee receives one service credit for each month worked if they worked at least 90 hours during that month. If they worked fewer than 90 hours, they receive one-half or less of a service credit. CP 90. Concrete reported 90 hours or more for each month that Kersteter worked as Transportation Supervisor, so he received the maximum number of service credits possible under his retirement plan. CP 90. Kersteter would not have received more service credits even if his job had been classified as full-time. CP 90.

Concrete moved for summary judgment dismissal of Kersteter's unjust enrichment and quantum meruit claims based on the existence of a contractual relationship between the parties. CP 42-44. The Court granted that motion on May 21, 2020. CP 70.

Concrete moved for partial summary judgment dismissal of Kersteter's claims under RCW 49.44.170 on December 31, 2020. On February 4, 2021, Kersteter moved for summary judgment, seeking rulings that RCW 49.44.170 does not require proof that the employer deliberately or knowingly misclassified the

employee, that only one element of proof under the statute was in dispute and that the court should allow damages remedies if Kersteter proved a violation of RCW 49.44.170. CP 103-109. On March 5, 2021, the trial court granted Concrete’s motion and dismissed Kersteter’s statutory claim. CP 254-255. The court did not reach Kersteter’s motion. Kersteter then stipulated to voluntarily dismiss all of his remaining claims that related to the amount of leave he received as a part-time employee. CP 269-70.

#### **IV. ARGUMENT FOR DENYING REVIEW**

##### **A. The “Central Issue” of the Petition for Review is an Issue that was not Addressed by the Court of Appeals Because it was Moot.**

Kersteter identifies the central issue of his Petition as, “What damages remedies, if any, are available to aggrieved employees under RCW 49.44.170(3)?” Pet. for Rev., p. 3 His first issue presented for review is, “Is there an implied remedy of damages under RCW 49.44.170(3)?” Pet. For Rev., p. 7. He argues that the statute failed to provide a remedy so “it was incumbent upon the Court of Appeals to fashion a remedy under the ‘applied remedies doctrine’”. Pet. for Rev., p. 28 This argument fails because the Court of Appeals and the Trial Court, never addressed the issue of damages or other remedies under RCW 49.44.170. Instead, they held dismissal of Kersteter’s

wage claim was appropriate because wages are not within the scope of benefits covered by that statute. After the court granted Concrete's motion for summary judgment dismissal, plaintiff's motions regarding damages and other remedies were moot. The "central issue" of Kersteter's Petition is not before this Court.

Kersteter also argues that his job was misclassified as part-time. Again, neither the trial court nor the Court of Appeals reached Kersteter's motion regarding misclassification because it was rendered moot by the dismissal of his statutory claim.

Additionally, Kersteter asserts that the Court of Appeals apparently ruled that to bring a claim under RCW 49.44.170(3), an employee must also bring claims under the Minimum Wage Act (RCW 49.46) and the Wage Payment Act (RCW 49.48). Pet. for Rev., p. 20 While Kersteter cites page 9 of the Court of Appeals Opinion, there is no such requirement stated anywhere in the Opinion. On page 9, the Court merely, incorrectly, stated "Kersteter abandoned all the wage claims under Chapters 49.46 and 49.48 RCW when he filed his amended complaint."

**B. The Court of Appeals Decision is Correct and Consistent with the Decisions of this Court and Other Courts of Appeal on Applying the Intent of the Legislature.**

Kersteter argues that courts must implement and give effect to the intent of the legislature. He does not, however,

establish that the Court of Appeals failed to do so in this case. Additionally, Kersteter ignores the fact the Court of Appeals' statutory interpretation is completely consistent with the cases he relies upon.

In *Dep't. of Ecology v. Campbell & Gwinn, L.L.C.* 146 Wn.2d 1, 43 P.3d 4 (2002), the issue before this Court was the scope of a statutory exemption to restrictions on the withdrawal and use of public groundwaters. This court first stated, at 9:

The meaning of a statute is a question of law reviewed de novo. *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *J.M.*, 144 Wn.2d at 480.

This Court then said, as cited by Kersteter, "The Court's fundamental objective is to ascertain and carry out the legislature's intent, ..." But Kersteter left out the rest of that sentence, "and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *J.M.*, 144 Wn.2d at 480. *Dep't. of Ecology*, at 10-11.

The *Dept. of Ecology* Court clarified the plain meaning rule by explaining at 11-12:

... the plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. ... Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001); *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994).

Although not mentioned by Kersteter, the Court of Appeals here applied the same analysis.

We review questions of statutory interpretation de novo. *Associated Press v. Wash. State Legislature*, 194 Wn.2d 915, 920, 454 P.3d 93 (2019). Under the rules of statutory interpretation, we must ascertain and carry out the legislature's intent. *Id.* If the statute's meaning is plain on its face, the court must give effect to that plain meaning as an expression of the legislature's intent. *Id.* If the statute is ambiguous, or susceptible to more than one reasonable meaning, it is appropriate to review the legislative history to glean intent. *Id.*

Kersteter Opinion, p. 6

With that framework for statutory analysis, the Court of Appeals noted that RCW 49.44.170 does not define either benefit or wages so the Court turned to dictionary definitions which “suggest that ‘wages’ can be read to include benefits, but ‘benefit’ is not read to include wages.” Kersteter Opinion, p. 7



In addition to dictionary definitions, the Court of Appeals looked at other statutes, specifically RCW 49.46.010(7) which, defines wages as meaning compensation due to an employee by reason of employment. The Court also noted that the same definition is applied in RCW 49.48.082(10) and the plain language does not include benefits as part of wages. Accordingly, the Court of Appeals concluded that RCW 49.44.170 is not ambiguous. “The plain meaning of employment-based benefits does not include wages.” Kersteter Opinion, p. 8

The Court went further in its analysis, stating that even if it assumed the definition of employment-based benefits was ambiguous, it would turn to the legislative history and reach the same result. The Court noted that the bill reports confirm the legislative concern about benefits rather than wages. In the final bill report, the background section states:

Public employers sometimes provide a low level of health insurance coverage, retirement plan coverage, sick or annual leave, or other employment-based benefits to persons who are employed in a part-time, temporary, leased, contract or other contingent basis.

As noted by the Court, “Wages are not included in this list.” Kersteter Opinion, p. 8

Kersteter has not cited cases from any Washington appellate court holding that wages are employment-based benefits under RCW 49.44.170. He speculates:

It is respectfully (sic) that it is likely that other panels of the Court of Appeals would have rejected this interpretation. Indeed, it is quite likely that other panels of judges – and possibly this Court – would have reached the **opposite** conclusion and found that Mr. Kersteter’s claims fall squarely within the legislative purposes of the misclassification statutes.

Pet. for Rev., p. 24 This argument is made without foundation and should be rejected. More importantly, Kersteter’s argument does not meet the requirement of RAP 13.4(b) of showing an inconsistency with existing decisions of this Court or of another court of appeals. Accordingly, Kersteter has not established a basis for accepting review.

**C. The Court of Appeals Decision is not Inconsistent with cases Kersteter Relies upon that a Remedial Statute must be Liberally Construed to Achieve its Purpose.**

Kersteter argues that the Court of Appeals “decision conflicts with the longstanding rule that remedial statutes must be liberally construed to achieve the broadest possible coverage.”

Pet. for Rev., p. 25 However, he cites no case holding that there is such a broad requirement.

RCW 49.44.160 states that this act shall be liberally construed “for the accomplishment of its purposes.” Similarly, the cases cited by Kersteter do not impose a broad obligation for courts to construe all remedial statutes in favor of employees.

In *Schilling v. Radio Holdings, Inc.* 136 Wn.2d 152; 961 P.2d 371 (1998), the court addressed the application of RCW 49.52.050 that holds an employer liable for double damages and attorney’s fees for the wrongful withholding of wages. This Court said, at 159:

[T]he fundamental purpose of the legislation, as expressed in both the title and body of the act, is to protect the *wages* of an employee against any diminution or deduction therefrom by rebating, underpayment, or false showing of overpayment of any part of such wages.

Addressing that specific statute, the Court said:

The statute must be liberally construed to advance the Legislature's intent to protect employee wages and assure payment. *See Brandt v. Impero, 1 Wn. App. [678] at 682 [463 P.2d 197 (1969)]*.

In support of his argument that RCW 49.44.170 should be construed to include wages as employment-based benefits, Kersteter refers to dictionary definitions, other statutes and case law. However, none of the definitions in the dictionaries, cases or statutes he relies upon involve compensation paid by an employer to an employee. For example, in *Chem. Bank v. Wash.*

*Public Power Supply Sys.*, 102 Wn.2d 874; 691 P.2d 524 (1984), cited by Kersteter, (Pet. for Rev., Appendix D) the reference to benefit was in the section addressing unjust enrichment. *Chem. Bank*, at 910. The definition of “benefits” that Kersteter cited as being from the Restatement is a reference to the *Restatement of Restitution §1 (1937)*. *Chem. Bank*, at 910. It has no application to employment-based benefits under RCW 49.44.170.

**D. The Court of Appeals Properly Affirmed Dismissal of Kersteter’s Unjust Enrichment Claim.**

The Court of Appeals held that because Kersteter and Concrete had an express contract, no unjust enrichment claim applies. Kersteter Opinion, p. 9 It noted that under the holding of *Young v Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008), “Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because the notions of fairness and justice require it.” Kersteter Opinion, p. 10 The Court of Appeals did not, as Kersteter claims, hold that “... the mere presence of a contract will, by itself, automatically bar any and all equitable suits between the parties.” Pet. for Rev., p. 30

The Court of Appeals opinion affirming dismissal of Kersteter’s unjust enrichment claim is consistent with *McDonald*

*v. Hayner*, 43 Wn. App. 81, 715 P.2d 519 (1986). That case held no unjust enrichment existed because:

A party to a valid express contract is bound by the provisions of that contract, and may not disregard the same and bring an action on an implied contract relating to the same matter, in contravention of the express contract.

*McDonald*, at 85-86 (quoting *Chandler v. Wash. Toll Bridge Auth.*, 17 Wn.2d 591, 604, 137 P.2d 97 (1943)).

The Court of Appeals correctly stated, “like in *McDonald*, Kersteter had an express contract with Concrete, and cannot raise an unjust enrichment claim.” Kersteter Opinion, pp. 10-11

Kersteter’s petition fails to acknowledge these cases that are directly on point. Further, the cases he relies on for broad statements regarding other equitable remedies have no application here. *Crafts. v. Pitts*, 161 Wn. 2d 16, 23, 162 P.3d 382 (2007) addressed the issue of whether the equitable remedy of specific performance is discharged in bankruptcy. *Columbia State Bank v. Invicta Law Grp. PLLC*, 199 Wn. App. 306, 402 P.3d 330 held that where foreclosure on collateral is not an adequate remedy, an equitable claim of successor liability is allowed. The Court of Appeals decision is correct and consistent with the controlling authority of *Young v. Young* and *McDonald v. Hayner* as well as the cases cited therein.

**E. Kersteter has not Established that the Unpublished Opinion of the Court of Appeals Involves an Issue of Substantial Public Interest.**

The only basis for review under RAP 13.4(b)(4) Kersteter musters is that there are many public employees in Washington. If that were a sufficient basis for review under RAP 13.4(b)(4), then every court of appeals decision adverse to a public employee would be subject to review.

**V. CONCLUSION**

The Court of Appeals decision affirming the trial court's dismissal of Kersteter's claim for more wages under RCW 49.44.170 and under the equitable doctrine of unjust enrichment is correct. The decision is not inconsistent with decisions of this Court or other courts of appeal. The Petition for Review does not involve issues of substantial public interest. Accordingly, Concrete respectfully requests that the Court deny the Petition for Review.

**Certificate of Compliance with RAP 18.17**

I certify that I have used word processing software that shows this document contains less than 5,000 words, excluding the portions exempted by RAP 18.17.

RESPECTFULLY submitted this 23<sup>rd</sup> day of June, 2022.

VANDEBERG JOHNSON &  
GANDARA, PS

By /s/ H. Andrew Saller, Jr.  
H. Andrew Saller, Jr.,  
WSBA #12945  
Attorneys for Respondent

**Certificate of Service**

I certify that I arranged for service a true and correct copy of this document for delivery via Appellate Portal on counsel of record for Appellant on the date below as follows:

Scott McKay  
Attorney at Law  
3614 California Ave. SW, Suite A  
Seattle, WA 98116-3780

Dated this 23<sup>rd</sup> day of June, 2022.

/s/ R. A. Schweinler  
Rachel A. Schweinler

**VANDEBERG JOHNSON & GANDARA**

**June 23, 2022 - 1:41 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,969-1  
**Appellate Court Case Title:** Karl Kersteter v. Concrete School District  
**Superior Court Case Number:** 18-2-00701-4

**The following documents have been uploaded:**

- 1009691\_Answer\_Reply\_20220623133832SC188638\_9488.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was HASJP872-RespAnswer.PDF*

**A copy of the uploaded files will be sent to:**

- scottjmckay@hotmail.com

**Comments:**

---

Sender Name: Rachel Schweinler - Email: rschweinler@vjglaw.com

**Filing on Behalf of:** Henry Andrew SallerJr. - Email: Asaller@vjglaw.com (Alternate Email: )

Address:  
1201 Pacific Avenue, Suite 1900  
Tacoma, WA, 98402  
Phone: (253) 383-3791

**Note: The Filing Id is 20220623133832SC188638**