

NO. 89377-2

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SUPREME COURT OF THE STATE OF WASHINGTON

KATHRYN SCRIVENER,

Petitioner,

v.

CLARK COLLEGE,

Respondent.

RESPONDENT CLARK
COLLEGE'S MOTION
TO STRIKE

I. IDENTITY OF MOVING PARTY

Respondent Clark College (the "College") asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

The College respectfully requests that the Court strike the letter submitted by the Washington Employment Lawyers Association ("WELA") in this matter on December 31, 2013.

III. FACTS RELEVANT TO MOTION

Petitioner Kathryn Scrivener filed a Petition for Review in this matter on October 4, 2013. That Petition is set for consideration by this Court on January 7, 2013. On November 5, 2013, this Court granted WELA leave to file an amicus curiae memorandum in support of Ms. Scrivener's Petition for Review. Attorney Jeffrey Needle filed said

memorandum on behalf of WELA on December 3, 2013. The College filed its response on December 20, 2013.

On December 31, 2013, Mr. Needle sent a letter to this Court regarding this matter that referenced RAP 10.8 and enclosed the Court of Appeals' recent opinion in *Alonso v. Qwest Communications Co.*, No 43703-1-II.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Although not styled as such, the College shall treat Mr. Needle's letter as a Statement of Additional Authority filed by amicus curiae WELA. RAP 10.8 permits the filing of a statement of additional authority, but places limits on its contents. "The statement should not contain argument, but should identify the issue for which each authority is offered." RAP 10.8.

WELA's Statement of Additional Authority is improper and should be stricken for two reasons. First, it goes beyond simply "identify[ing] the issue for which [it] is offered" and contains impermissible argument. Second, *Alonso* relates to an issue—the analysis that applies on summary judgment to employment discrimination claims where there is direct evidence of discriminatory intent—that is not properly before this Court because it was never raised or argued before the trial court. RAP 2.5(a), 9.12. On the contrary, Ms. Scrivener argued to

the trial court that she was “not required to produce ‘direct’” evidence of discrimination. CP 94. Accordingly, the Court should strike WELA’s Statement of Additional Authority.

RESPECTFULLY SUBMITTED this 2nd day of January, 2014.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid

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

DATED this 2nd day of January, 2014, at Tumwater, Washington.


Melissa Kornmann, Legal Assistant 3

OFFICE RECEPTIONIST, CLERK

From: Kornmann, Melissa (ATG) <MelissaK@ATG.WA.GOV>
Sent: Thursday, January 02, 2014 2:22 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: sdmcculloch@sdmlaw.net; jneedlel@wolfenet.com; Lanese, Christopher (ATG)
Subject: Scrivener v. Clark College - 89377-2 Filing
Attachments: RespMotion2Strike.pdf

Dear Clerk:

Attached please find **Respondent Clark College's Motion to Strike** in the above matter for filing. Thank you!

<<RespMotion2Strike.pdf>>

Melissa D. Kornmann

LA3 – Team 6

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