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NO. 880794

SUPREME COURT OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION
STEVE SARICH, JOHN WORTHINGTON;
AND; DERYCK TSANG ;AND; ARTHUR WEST

Appellants

v.

CITY OF KENT ET AL,

Respondents

APPELLANT JOHN WORTHINGTON'S OPENING BRIEF

John Worthington
4500 SE 2ND PL.
Renton WA.98059

ORIGINAL

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I. ASSIGNMENTS OF ERROR

Assignments of Error.

The trial court erred in granting the Defendants Motion for Summary Judgment, and when it denied the Appellants Motion for Summary Judgment.

The trial court erred in those rulings when it failed to give the proper effect to the plain meaning of RCW 69.51A.085, RCW 69.51A.025 and RCW 69.51A.140, and, when it ruled the City of Kent ordinance KCC 15.08.290 preempted RCW69.51A, and, in ruling the federal CSA preempted the Washington State Medical Cannabis Act. The trial court then repeated those errors when it denied Worthington and the other Appellant's Motion to Reconsider

Issues Pertaining To Assignments of Error

A. Whether the trial court construed RCW 69.51A.085, RCW 69.51A.025, and RCW 69.51A.140 contrary to law.

B. Whether the trial court erred in ruling the federal CSA preempted the Washington State Medical Cannabis Act.

C. Whether the trial court erred in ruling the City of Kent ordinance KCC 15.08.290 preempted RCW69.51A.

II. STATEMENT OF THE CASE

This case arises out of a dispute regarding the enforcement of a City of Kent ban on medical cannabis collectives. In 2011, the Legislature adopted Engrossed Second Substitute Senate Bill 5073, (Heretofore ESSSB 5073), amending Washington's laws pertaining to the medical use of cannabis. The City of Kent

alleged that section 1102 of ESSSB 5073,codified at RCW69.51A.140, was preempted by federal law and contained language allowing them to ban medical cannabis collectives, which they did by city ordinance KCC 15.08.290, on June 5, 2012. CP 28, 34, 335-341.

On June 5, 2012, Worthington joined other Appellants and filed suit in King County Superior Court challenging the City of Kent's moratorium and ordinance KCC 15.08.290. CP 1-18.

On June 20, 2012, Worthington, and the other Appellants filed an amended complaint , (CP 19-34), arguing amongst other things, that section 403, RCW 69.51A.085, did not contain any language permitting city or county regulatory authority. On July 6, 2012, the defendants acknowledged case and controversy for alleged violations of KCC 15.08.290 ,when they filed countersuits against all the plaintiffs.

On July 12, 2012, Worthington and the other Appellants filed a Motion for Summary Judgment, (CP 652- 657), arguing again that there was no local control over RCW 69.51A.085 or federal preemption. In reply to the defendant's response, Worthington also argued amongst other things, that prime sponsor of ESSSB 5073, Senator Jeanne Kohl Welles, was disappointed she was unable to give local control of the non-commercial production of medical cannabis. CP 530-533

On August 15, 2012, the City of Kent also filed a motion for Summary

Judgment, (CP 135-168), and asked for a Permanent Injunction against the plaintiff's, to uphold their ban. The City of Kent argued, that RCW 69.51A.140 contained language that allowed them to ban medical marijuana collectives, and insisted that the Governor left section 1102 intact, specifically for the purpose of banning production of all cannabis. The City of Kent also argued federal law preempted the state medical marijuana law, and the City ordinance could preempt Washington State law.

On October 5, 2012, King County Superior Court Judge Jay White ruled the City of Kent could enforce the KCC 15.08.290 and issued permanent injunctions against all the Appellants. CP 558-560.

On October 15, 2012, Worthington and the other Appellants, filed a motion to reconsider, (CP 563-580), arguing federal law did not preempt state law, and the ordinance violated state law. The Appellants also argued RCW 69.51A.025 contained language that protected the rights of qualified patients and designated providers from local control or an outright ban, if they complied with RCW 69.51A.040.

On October 22, 2012, the trial court denied the Motion to Reconsider, and on November 5, 2012, Worthington joined the other Appellants and filed this timely appeal of the trial courts orders.

III. ARGUMENT

The appropriate standard of review for an order granting or denying summary judgment is de novo, and the appellate court performs the same inquiry as the trial court. Sheikh v. Choe, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). Additionally, constitutional questions are issues of law are also reviewed de novo. City of Redmond v. Moore, 151 Wn.2d 664, 668, 91 P.3d 875 (2004).

A. Whether the trial court construed RCW 69.51A.085, RCW 69.51A.025, and RCW 69.51A.140 contrary to law.

The trial court erred by failing to properly construe the legislative and executive intent of RCW 69.51A.085, RCW 69.51A.025, and RCW 69.51A.140. "A court's objective in construing a statute is to determine the legislative intent." Christensen v. Ellsworth, Wn.2d, 173 P.3d 226 (2007); Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1,9,43 P.3d 4 (2002).

Worthington and the other Appellants demonstrated to the trial court that there was no ambiguity in plain meaning of RCW 69.51A.085, RCW 69.51A.025, and RCW 69.51A.140, nor in the Governor's veto letter, regarding qualifying patients forming and participating in cannabis collectives. "In the absence of ambiguity, we will give effect to the plain meaning of the statutory language." In re Marriage of Schneider, 173 Wash.2d 353, 363, 268 P.3d 215 (2011).

In arguing the plain meaning of medical cannabis collectives,

Worthington and the other Appellants relied on section 403 of ESSSB 5073, (CP 565) codified at RCW69.51A.085, which enabled qualified patients to create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use, as shown below:

> Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:[1]
>
> (a) No more than ten qualifying patients may participate in a single collective garden at any time;
>
> (b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;
>
> (c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;
>
> (d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and
>
> (e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.
>
> (2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to

[1] The City of Kent never alleged that Worthington failed to comply with the conditions outlined in RCW 69.51A.085.

> plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.
>
> (3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

As shown above, the plain meaning of RCW 69.51.085, on its face, establishes the right to create and participate in a collective garden.

Worthington and the other Appellants also relied on the plain meaning of section 413 of ESSSB 5073, codified at RCW 69.51A.025, (CP 566), which covers the construction of the chapter. RCW 69.51A.025 clearly states that *nothing* in the chapter or in the rules adopted to implemented it *precludes* a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery administration of cannabis as shown below:

> Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

As shown above in the plain meaning of RCW 69.51A.025, the language "nothing in the chapter" would include any language in RCW 69.51A.140, the section the court has relied upon to grant the orders for summary judgment and the injunction.

Since the City of Kent failed to show Worthington was not in compliance with plain meaning of RCW 69.51A.040, his activity under RCW 69.51A.085 was protected from RCW 69.51A.140, by RCW 69.51A.025, due to the fact he was compliant with RCW 69.51A.040.

The City of Kent relied on the plain meaning of section 1102 of ESSSB 5073, codified at RCW 69.51A.140, (CP 268-269), which was intended by the legislature to be used by the cities, towns and counties to regulate licensed dispensers as shown below:

> RCW 69.51A.140
> Counties, cities, towns -authority to adopt and enforce requirements.
>
> (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon *licensed dispensers*, so long as such requirements do not preclude the possibility of siting *licensed dispensers* within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate *licensed dispensers.*

However, as shown above in the plain language of RCW 69.51A.140, there is no reference to any city or county authority nor any licensing requirements for collective gardens.

Worthington and the other Appellants argued that in the plain language of

the Governor's veto letter, (CP 274), the Governor vetoed the state licensed dispensaries sections supporting section 1102, and either made section 1102 of ESSSB 5073 an orphan section without meaning as shown below:

> "Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" *are without meaning* in light of the vetoes of sections providing for such *licensed dispensers*. It is with this understanding that I approve Section 1102."

Or that in the alternative, section 1102 was left it in to allow nonprofit organizations to produce process and dispense cannabis if the legislature chose to act as shown below. CP 274.

> ' I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications."

As shown above in the plain language of the Governor's veto, section 1102, (RCW 69.51A.140) does not provide express authority to ban collective gardens. The City's assertion, that RCW 69.51A.l40 grants specific zoning authority to ban

collective gardens from all zones within the City, is not found in either the plain language of RCW 69.51A.140, nor the Governor's veto.

The City of Kent also relied on the misguided belief that RCW 69.51A.085 was void after the Governor vetoed the patient registry in section 901 of ESSSB 5073. However, the city failed to notice the language in section d said "qualifying patients valid documentation or" "proof of registration with the registry established in section 901 as shown below:

> (d) A copy of each qualifying patient's valid documentation *or* proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

As shown above, only the proof of registration language is void, because the Governor vetoed section 901. The rest of section (d) is still valid because it is protected by the severance clause found in RCW 69.51A.903 shown below:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, *the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application,* and to this end the provisions of this act are severable.

Furthermore, the Governor obviously reestablished protection from arrest and Prosecution , without a patient registry in her veto letter as shown below:

> "Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. *Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions.* Qualifying patients or their designated providers are also protected from certain state civil law consequences."

As Shown above in RCW 69.51A.903, and the Governor's veto letter, the City of Kent's argument that the entirety of RCW 69.51A.085 or RCW 69.51A.040 is void, due to the veto of the registration system is without merit.

Worthington and the other Appellants also provided additional proof to the trial court, (CP 530-533), that the legislature did not intend for ESSSB 5073 to give local control to the cities and counties for the purpose of regulating all of the production of cannabis, in the form of post legislative session comments published by the prime sponsor of ESSSB 5073 Senator Jeanne Kohl Welles shown below:

> " *I also regret our failure to provide cities and counties with the tools they need to regulate dispensaries and grow operations.*"

Worthington and the other Appellants also argued that Senator Kohl Welles attempted both SB 5955, and SB 6265 in response to that failure, which would not only give cities and counties "the tools they need", but would have also created the non-profit language that would have met the criteria mentioned above in Governor Gregoire's veto letter. However, both bills failed to pass and thus

failed to give local control of production of cannabis to counties or cities. CP 532-545.

Without the passage of those two bills spelling out any local authority to regulate or ban collective gardens , the defendant was then left with the language in the Governor's veto letter (CP 276) shown below:

> "Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. *Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions.* Qualifying patients or their designated providers are also protected from certain state civil law consequences."

However, the veto letter only shows support for collective gardens and does not show any city or county regulatory criteria for qualified patients or collectives. In addition the Governor offers protections from state law criminal prosecutions.

The trial court erred when the court failed to give effect to the plain meaning to the statute RCW 69.51A.140, to regulate producing, processing and dispensing cannabis for medical use by either licensed dispensers or nonprofit groups. The court also erred when it failed to give effect to the plain meaning of RCW 69.51A.085, and RCW 69.51A.025, the sections which were intended to regulate the qualifying patient's private, unlicensed, noncommercial production,

possession, transportation, delivery or administration of cannabis, and not the dispensing of medical cannabis by state licensed dispensers or nonprofit groups.

In determining whether a statute conveys a plain meaning, "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." Dep't of Ecology v. Campbell& Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

Clearly, the legislative intent of the legislature and the Governor, for RCW 69.51A.085, and RCW 69.51A.025, was to allow the qualifying patients' private, unlicensed, noncommercial production, possession, transportation, delivery or administration of cannabis, and separate that activity from the dispensing of medical cannabis by state licensed dispensers or nonprofit groups.

In its interpretation of RCW 69.51A.140, the trial court had to add the words "dispensing cannabis for medical use." to sections RCW 69.51A.085, and RCW 69.51A.025, and then add the words noncommercial production to RCW 69.51A.140. "Even though we look to the broader statutory context, we do not add words where the legislature has not included them, and we construe statutes "'such that all of the language is given effect." (See Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003))

If the plain meaning of RCW 69.51A.025 is given effect, the language "nothing in this chapter" could only be interpreted to mean that the language in

RCW 69.51A.140 was included in that exemption. Not only did the trial court have to add words to the plain meaning of RCW 69.51A.140, the trial court also had to remove the specific exemptions clauses inherent in the statutory scheme of the entire chapter, particularly RCW 69.51A.025, and rendered them meaningless and/or superfluous. Exemptions, as with all statutory provisions, must be interpreted and construed "'so that all the language used is given effect, with no portion rendered meaningless or superfluous.'" See G-P Gypsum Corp. v. Dep't of Revenue, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (internal quotation marks omitted) (quoting State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

The trial court obviously failed to properly interpret RCW 69.51A.085, RCW 69.51A.025, and RCW 69.51A.140 together and achieve a harmonious and unified statutory scheme. "In interpreting a statute "each provision of a statute should be read together (in pari material) with other provisions in order to determine the legislative intent underlying the entire statutory scheme." State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). "The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes."

The omission of RCW 69.51A.085 and collective gardens from RCW 69.51A.140, was clearly intended by the legislature and the Governor. "Where a statute specifically designates the things upon which it operates, there is

an inference that the Legislature intended all omissions." In re Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999). If the Governor had intended to override the legislature and create local control of all cannabis production with her veto power, she would have also vetoed section 413 of ESSSB 5073,(RCW 69.51A.025), which she did not. This omission prevents local control over RCW 69.51A.085.

Worthington and the other Appellants argued that RCW 69.51A140 applied to production, processing, *"or dispensing"* of cannabis, while the savings clause in RCW 69.51A025 does not mention "dispensing", and includes only "private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use" (terms more applicable to collective gardens.) (*See* RCW 69.51A.085 which limits collective gardens to "producing, processing, transporting and delivering cannabis for medical use" and excludes "dispensing.")

In the trial court's ruling on the cross motions for summary judgment, the trial court erred by rendering the non-commercial use language in RCW 69.51A.025, and RCW 69.51A.085 meaningless, and legislated from the bench the term noncommercial use into RCW69.51A.140. This judicial legislation of the term noncommercial use improperly authorized Kent to regulate noncommercial use and has improperly granted the City of Kent powers to ban noncommercial use by qualifying patients exercising their rights under RCW 69.51A.085.

However, allowing cities and counties power to unilaterally ban the activities of qualifying patients was not the intent of the legislature or the Governor, and such an action would be the definition of an absurd result. "Courts avoid interpreting a statute in a way that leads to an absurd result because we presume the legislature did not intend an absurd result." (See SEIU Healthcare 775NW v. Gregoire, 168 Wn.2d 593, 620, 229 P.3d 774 (2010).

It is crystal clear from the plain language of ESSSB 5073 that the legislature did not intend to provide local control over the qualifying patients "noncommercial use", which would obviously have led to the local banning of individual patients' grows. Indeed, the prime sponsor Senator Jeanne Kohl Welles acknowledged this to Worthington in an email. (CP 639-642)

It is also clear from the plain language of the Governor's veto that Governor Gregoire did not intend to create local control over qualifying patients' noncommercial use, after she failed to include section 413 of ESSSB 5073 in her veto letter, and then offered specific protections from state arrest and prosecutions in that same veto letter. Common sense dictates that RCW 69.51A.085 and RCW 69.51A.025 were meant to regulate noncommercial production, and RCW 69.51A.140 was meant to regulate commercial production.

As shown above, Worthington and the other Appellants had adequately demonstrated to the trial court there was obvious doubt as to whether the City of

Kent had the power to ban collectives. "If there is a doubt as to whether the power is granted, it must be denied." (See Port of Seattle v. Wash.Utils. &Transp.Comm'n, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979). *Id.* at 795.

Instead of giving effect to the plain meaning of the statutes RCW 69.51A.085 and RCW 69.51A.025, on their face, the trial court construed those statutes contrary to law, and improperly inserted local control. The trial court then misconstrued the plain meaning of RCW 69.51A.140, after the Governor's veto letter to give KCC 15.08.290 its effect. "If a statute's meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent." Dep't of Ecology, 146 Wn.2d at 9-10.

B. Whether the trial court erred in ruling the federal CSA preempted the Washington State Medical Cannabis Act.

The trial court also erred when it failed to accept the argument that the Washington State Medical Cannabis Act was not preempted by the federal CSA. Worthington and the other plaintiff's showed the trial court that the issue of federal marijuana laws preempting state medical cannabis laws has been argued, and settled by the U.S. Supreme Court in one state. (CP 585-636)

The federal and state courts have consistently held that medical cannabis laws are a medical practice issue since it does not involve a prescription and is premised on the first amendment rights of physicians to recommend cannabis use. (See, Conant v. Walters, 309 F.3d 629, 648 (9th Cir. 2002)

Furthermore, "The purpose of the CSA is to combat recreational drug use, not to regulate a state's medical practices". (See San Diego County et al v. San Diego Norml et al 165 Cal.App.4th 798, 81 cal rptr 3d 461 (2008), US Supreme Court certiorari denied by, U.S. , 129 S. Ct. 2380, 173 L. Ed. 2d 1293 (2009) (quoting Gonzales v. Oregon, supra, 546 U.S. at pp. 270-272 [*827][2006] [holding Oregon's assisted suicide law fell outside the preemptive reach of the CSA.]

In addition, the California Appellate court also ruled, "The California medical cannabis law "does not conflict with federal law", because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws" (See San Diego County et al v. San Diego Norml et al 165 Cal.App.4th 798, 81 cal rptr 3d 461 (2008). Washington's RCW 69.51A.085 does not make recreational use legal, has the same exemption framework as California's medical cannabis law, and also cannot be preempted by federal laws.

The City of Kent's argument that they are required to enforce the provisions of the federal CSA falters on its own predicate because Congress does not have the authority to compel the states to direct their law enforcement personnel to enforce federal laws. In Printz v. United States (1997) 521 U.S. 898, the federal Brady Act purported to compel local law enforcement officials to

conduct background checks on prospective handgun purchasers. The United States Supreme Court held the 10th Amendment to the United States Constitution deprived Congress of the authority to enact that legislation, concluding that "in [New York v. United States (1992) 505 U.S. 144, that Congress cannot compel the States to enact or enforce a federal regulatory program.

As shown above, the trial court erred by ruling that RCW 69.51A.085 frustrated the ability of the federal CSA to regulate recreational drug use, because the recreational drug users are not entitled to the medical use exemptions in RCW 69.51A.085 or RCW 69.51A.025. The federal CSA can still be applied to recreational users and can still combat recreational drug use. The court also erred when it failed to consider that the Anti- Commandeering doctrine prevented the federal government from forcing the City of Kent to enforce federal law, or that the legislators had considered the federal laws when drafting ESSSB 5073, or consider that the governor's veto letter citing federal laws, had removed any federal preemption conflict.

C. Whether the trial court erred in ruling the City of Kent ordinance KCC 15.08.290 preempted RCW69.51A.

Contrary to the superior court's ruling, the City of Kent's action banning collective gardens from the entirety of the City is pre-empted by State law. Preemption may occur when the Legislature states its intention by necessary implication to preempt the regulated field,. Kennedy v. City of Seattle, 94 Wn.2d

376,383,617 P.2d 713 (1980). The test for whether an ordinance is in conflict with a general law promulgated by the Legislature is simply whether the ordinance permits that which the statute forbids or forbids what is permitted by the statute. Weden, 135 Wn.2d at 693. In determining the intent of the Legislature, the Court will look the plain language of the statute. State v. Keller, 98 Wn.App.381, 383-84,990P.2d423 (1999), cert. denied, 534 U.S. 1130,122 S. Ct. 1070, 151L.Ed.2d 972 (2002).

As shown above, there is nothing in the plain language of ESSSB 5073, nor the Governor's veto, that empowers local authorities to ban collective gardens. The trial court erred as a matter of law when it held otherwise.

In the 2013 legislative session, the Legislators have acknowledged as much by including local control of medical cannabis in RCW 69.51A.140, in section 9 of SB 5528.The only reason to alter the specific Language the City of Kent is relying on for their ban on collective gardens, was if there was no local control over medical cannabis, or doubts over local control. This language alteration attempt by the Washington State legislature proved without a doubt there is no local authority to ban collective gardens in RCW 69.51A.140 and shows that the City of Kent and dozens of other Washington State cities have illegally banned medical cannabis collective gardens.

VI. CONCLUSION

For the reasons set forth herein, Worthington respectfully requests that this Court remand this case back to the Superior Court with orders to reverse all rulings and orders.

Respectfully submitted on this 12TH day of February, 2013

BY John Worthington

John Worthington
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DECLARATION OF SERVICE

I declare that on the date and time indicated below, I caused to be served via email and U.S. Mail, a copy of the documents and pleadings listed below upon the attorneys of record for the Respondent, and an Appellant, as well as the other parties herein listed and indicated below.

1. APPELLANT WORTHINGTON'S OPENING BRIEF

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I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Executed on this 12TH day of February, 2013

BY John Worthington

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