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CASE NO. 93282-4

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

DONALD R. SWANK, individually and as personal representative of the
ESTATE OF ANDREW F. SWANK; and PATRICIA A. SWANK,
individually

Petitioners,

v.

VALLEY CHRISTIAN SCHOOL, a Washington State non-profit
corporation; JIM PURYEAR, MIKE HEDEN, and DERICK TABISH,
individually; and TIMOTHY F. BURNS, M.D., individually

Respondents.

**RESPONDENT VALLEY CHRISTIAN SCHOOL'S ANSWER TO
PETITION FOR REVIEW**

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Mike Heden



ORIGINAL

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I. IDENTITY OF ANSWERING RESPONDENT

Respondent Valley Christian School (“VCS”) presents the following Answer to the Petition for Review.¹

II. ANSWER TO ISSUES PRESENTED AS TO VALLEY CHRISTIAN SCHOOL

1. Petitioners do not seek review of the holding that the Lystedt law does not impliedly incorporate standards not set forth or referred to within the statute. Regardless of the disposition of the Petition, that holding should stand.
2. A parent volunteer at a non-profit school should not be excluded from RCW 4.24.670, the volunteer immunity statute, because that parent donated money, as well as time, to the school. The Court of Appeals did not err in rejecting Petitioners’ joint venture theory.

III. ARGUMENT

A. No Review Having Been Sought, The Holding That The Statute Does Not Impliedly Incorporate Extrinsic Standards Should Stand.

In Petitioners’ complaint, the claim as to VCS was that it failed “to adopt, initial implement and carryout the protocols and procedures required by [RCW 28A.600.190].” (CP 4-7)

¹ Respondents Derick Tabish and Mike Heden, also represented by the undersigned counsel, have previously been dismissed by stipulation of the parties.

As described by the Court of Appeals, this contention developed into the claim that “the Lystedt law requires schools and coaches to adhere to ‘generally recognized return to play standards’ that mandate gradually returning an athlete to play after sustaining a concussion or head injury.” *Donald R. Swank, et al., v. Valley Christian School, et al.*, __ Wn. App. __, __ P.3d __ (2016) (“Decision”) at ¶ 16.

Rejecting this contention, the Court of Appeals explained:

Contrary to the Swanks’ contention, the Zackery Lystedt law does not adopt “generally recognized return to play standards.” Rather, in the Zackery Lystedt law’s introductory section, the law notes – notwithstanding the presence of standards for returning athletes to play after sustaining a concussion – some athletes are still prematurely returned to play. The Zackery Lystedt law does not specifically reference any return to play standard.

Decision at ¶ 18.

The Court of Appeals further explained that, in examining the legislative history, it found “no legislative testimony regarding or even contemplating gradual return to play standards.” Decision at ¶ 19. “[T]estimony ... focused on removing young athletes from play if a brain injury is suspected and not returning them to play until cleared by a licensed health professional.” *Id.*

As described in the Petition, review is sought of the holding that the Lystedt law does not create an independent cause of action, of the holding concerning the joint venture theory, and of the holding concerning jurisdiction over Dr. Burns. (See Petition at 5-18) Review was not expressly sought of the holding rejecting the implied incorporation of standards. (*Id.*)

Consequently, regardless of the Court's disposition of the other aspects of the Petition, the Court of Appeals' holding rejecting the contention that Lystedt law incorporates "generally recognized return to play standards" should stand.

B. The Court Of Appeals Did Not Err In Holding That A Parent Who Volunteers Time To Coach, And Donates Money To The Sports Program, Is Within RCW 4.24.670.

As described by the Court of Appeals:

VCS is a nonprofit religious school located in Spokane Valley, Washington. In 2007, Mr. Puryear, a parent of students at VCS, approached VCS about starting a football program at the school. VCS did not have a football program because it lacked money. To start the program, VCS relied extensively on outside donations, with Mr. Puryear's family providing the bulk of the money. With the money, Mr. Puryear purchased equipment and paid for team meals, transportation, referees, and emergency personnel. Mr. Puryear served as the head coach of the football team, but he received no payment.

Decision at ¶ 4. Additionally, Puryear signed a volunteer contract with VCS. (CP 59) Further, consistent with RCW 4.24.670, VCS carries a policy of insurance with \$1 million in liability coverage. (CP 51-53)

RCW 4.24.670 provides, in pertinent part:

- (1) ... a volunteer of a nonprofit organization or governmental entity shall not be personally liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:
 - (a) The volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
 - (b) If appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
 - (c) The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer;
 - (d) The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance; and
 - (e) The nonprofit organization carries public liability insurance covering the organization's liability for harm caused to others for which it is directly or vicariously

liable of not less than the following amounts:

...

(iii) For organizations with gross revenues of one hundred thousand dollars or more, at least five hundred thousand dollars due to bodily injury or death.

...

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

...

(e) "Volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowance for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year.

Puryear donated money to the VCS athletics program, and donated his time as the volunteer coach of VCS students, including his own son. Puryear, a natural person, is an individual, and by serving as the volunteer coach, without compensation, he was "performing services" for VCS. The Court of Appeals did not err in holding the statute shields Puryear from immunity (*see* Decision at ¶ 41), and there is no ambiguity in the plain language of the statute. Consequently, further review is unwarranted.

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IV. CONCLUSION

For the foregoing reasons, Respondent VCS requests that the Court deny the Petition.

RESPECTFULLY SUBMITTED this 29th day of July, 2016.

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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2016, I caused to be served a true and correct copy of the foregoing **RESPONDENT VALLEY CHRISTIAN SCHOOL'S ANSWER TO PETITION FOR REVIEW**, by the method indicated below and addressed to the following:

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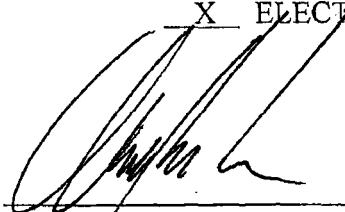
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Dear Clerk of the Court,


Attached for filing is Respondent Valley Christian School's Answer to the Petition for Review.

Kind Regards,

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