

SUPREME COURT OF
THE STATE OF WASHINGTON

JOHN DOE G, *et al.*, as individuals
and on behalf of others similarly
situated,

Respondents,

v.

DEPARTMENT OF
CORRECTIONS,

Petitioner.

and

DONNA ZINK,

Petitioner.

No. 94203-0

RESPONDENTS'
OPPOSITION TO
PETITIONER ZINK'S
MOTION TO STRIKE

Respondents respectfully request that Petitioner Donna Zink's motion to strike be denied.

In their answer, Respondents advanced an alternative argument—albeit an argument also raised below—to support the Court of Appeals' ruling. *See Answer to Pets. 11–17.* Zink seems to be arguing that Respondents cannot raise this argument unless they seek review of the

Court of Appeals' decision via a cross-petition. *See* Mot. to Strike 1. That is incorrect. To raise an issue, "RAP 13.4(d) and 13.7(b) do not require [Respondents] to file a cross-petition . . . or . . . affirmatively seek review." *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 210 n.3, 87 P.3d 757 (2004) (quotation marks omitted). Thus, an answer may raise an issue without seeking review. *Id.* By contrast, a cross-petition is necessary, and a reply allowed, only if a respondent affirmatively seeks review. That is not the case here.

In their answer, Respondents also argued that Zink never properly raised (and thus waived) one of the issues on which she now seeks review. Zink asserts without citation that Respondents' argument is false, and she asks the Court to strike it. But the argument is correct, *see* Corrected Br. of Resp'ts 34 n.11, and in any event, this Court can scrutinize the record on its own and decide which party is correct. Under these circumstances, a motion to strike constitutes a waste of resources.

DATED this 24th day of March, 2017.

KELLER ROHRBACK L.L.P.

By *s/ Benjamin Gould*

Benjamin Gould, WSBA #44093
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: (206) 623-1900
Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on March 24, 2017, I caused a true and correct copy of this document to be served on Donna and Jeff Zink (dlczink@outlook.com) and Timothy John Feulner (TimF1@atg.wa.gov; cherriek@atg.wa.gov; correader@atg.wa.gov) via email, pursuant to RAP 18.5(a) and CR 5(b)(7).

s/ Cathy A. Hopkins _____

Cathy A. Hopkins
Seattle, Washington
March 24, 2017