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SUPREME COURT
OF THE STATE OF WASHINGTON

AUTOMOTIVE UNITED TRADES
ORGANIZATION, a non-profit
trade association,

Appellant,

v.

THE STATE OF WASHINGTON;
CHRISTINE GREGOIRE, in her
capacity as Governor of the State of
Washington; LIZ LUCE, in her
official capacity as Director,
Washington State Department of
Licensing,

Respondents.

NO. 85661-3

APPELLANT'S REPLY
IN SUPPORT OF
MOTION TO EXPAND
THE APPELLATE
COURT RECORD
UNDER RAP 9.11

1. Introduction

Automotive United Trades Organization ("AUTO") seeks to add four documents to the appellate record under RAP 9.11. On Wednesday, December 28, the State responded, opposing the motion. The State argues that one of the documents was created in January, while trial court proceedings were ongoing. The State also claims that the documents do not relate to the issues on review.

2. Argument

The State's argument regarding timeliness is meritless. First, the State only alleges that one of the documents was created while trial

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proceedings was ongoing, and has no argument as to the other three. Second, AUTO was not aware of any of these documents while trial proceedings were ongoing. AUTO is obviously not a party to the State-Yakama compact, nor is DOL in the habit of automatically disclosing all of its internal memoranda and correspondence to AUTO on the date they are created. The January document in question was not received by AUTO until May, and then only *in response to a Public Records Act request*.

The State's claim that the documents are irrelevant is equally flawed. This Court has been tasked with deciding whether there should be any judicial oversight of the State's potential abuse of authority in disbursing taxpayer funds according to the strictures of the 18th Amendment. One of the key arguments the State made below, and again on review to this Court, is that AUTO's suit can safely be dismissed because the State's compacts with tribes provide adequate mechanisms by which the State can ensure that the 18th Amendment is obeyed.

The documents AUTO seeks to admit prove that the State is failing in its obligation to obtain gas tax money collected by the Yakamas that should have been remitted to the State and to ensure that such monies are being spent properly.

The documents in question go right to the heart of AUTO's argument on review: that some measure of judicial oversight of the State is needed to ensure that the State and its officers fulfill and execute their constitutional duties. CR 19's ultimate admonition is that courts should not dismiss suits based on failure to join parties if they cannot do so "in equity and good conscience." CR 19(b). If the State is failing to enforce its agreements, to the detriment of the citizens of Washington, that information is relevant to the issue of whether CR 19 should be applied to preclude any and all judicial review of the conduct of State officers in the present case.

3. Conclusion

This Court should grant AUTO's motion under RAP 9.11 to expand the record on review to include this new evidence.

DATED this 31 day of January, 2012.


Philip A. Talmadge, WSBA #6973
Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188-4630
(206) 574-6661
Attorneys for Appellant Automotive United
Trades Organization

DECLARATION OF SERVICE

On said day below I emailed and deposited with the U.S. Postal Service a true and accurate copy of: Appellant's Reply in Support of Motion to Expand the Appellant Record Under RAP 9.11 in Supreme Court Cause No. 85661-3 to the following parties:

Van A. Collins 410 11 th Avenue SE, Suite 203 Olympia, WA 98501-2371	Kristopher I. Tefft PO Box 658 Olympia, WA 98507-0658
Harry J.F. Korrell Davis Wright Tremaine, LLP 1201 3 rd Avenue, Suite 2200 Seattle, WA 98101-3045	Todd R. Bowers, Senior Counsel Attorney General of Washington--CJD 800 5 th Avenue, Suite 2000 Seattle, WA 98104-3188
Rene D. Tomisser, Senior Counsel Attorney General of Washington Torts Division PO Box 40126 Olympia, WA 98504-0126	Howard M. Goodfriend Smith Goodfriend, P.S. 1109 1 st Avenue, Suite 500 Seattle, WA 98101-2988
Kenneth W. Masters Shelby R. Frost Lemmel Masters Law Group, PLLC 241 Madison Avenue North Bainbridge Island, WA 98110-1811	

Original efiled with:

Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504

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

DATED this 3rd day of January, 2012, at Tukwila, Washington.



Paula Chapler
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Paula Chapler
Subject: RE: Automotive United Trades Organization v. The State of Washington, et al.

Rec. 1-3-12

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From: Paula Chapler [<mailto:paula@tal-fitzlaw.com>]
Sent: Tuesday, January 03, 2012 12:32 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Automotive United Trades Organization v. The State of Washington, et al.

Per Ms. Tribe's request, please see the attached Appellant's Reply in Support of Motion to Expand the Appellate Court Record Under RAP 9.11 for filing in the following case:

Case Name: Automotive United Trades Organization v. The State of Washington, et al.
Cause No. 85661-3
Attorney: Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick
(206) 574-6661