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STATE OF WASHINGTON
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SUPREME COURT No. 88546-0

SUPREME COURT
OF THE STATE OF WASHINGTON

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WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS and
THE STATE OF WASHINGTON,

Petitioners,

vs.

WASHINGTON EDUCATION ASSOCIATION, *et al.*,

Respondents.

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR
DISCRETIONARY REVIEW**

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 ORIGINAL

I. ARGUMENT

By agreeing that discretionary review is appropriate, Respondents also implicitly concede that review should occur in this Court rather than at the Court of Appeals. The reasons justifying discretionary review also justify direct review.

This appeal involves fundamental questions about the Legislature's authority to limit the scope of enhancements to the retirement benefits it provides. The trial court's decision that the Legislature's repeal of the "uniform cost of living adjustment" ("UCOLA") was unconstitutional is a decision that involves a controlling question of law. The decision also constitutes the invalidation of a statute on a ground repugnant to the Washington State Constitution. *See* RAP 2.3(b)(4); 4.2(a)(2). Moreover, the appeal presents both a controlling legal question in which a substantial ground for differences of opinion exist, as well as an issue of broad public import requiring prompt and ultimate determination. *See* RAP 2.3(b)(4); 4.2(a)(4).¹

Discretionary review also is appropriate because this Court's

¹ Respondents concede that this appeal meets the requirements for direct review under RAP 4.2(a)(4), *see* Respondents' Answer at 7, but illogically contend that the case would be decided more quickly if the Court were to decline to hear this case. They argued exactly the opposite position in the "gain-sharing" case. *See* "Statement of Ground for Direct Review" *Washington Educ. Ass'n, et al. v. State of Washington & Washington St. Dep't of Ret. Sys.*, Supreme Court Case No. 87424-7 (filed July 3, 2012) at 10-11.

decision will materially advance the ultimate termination of the litigation. This Court recently accepted direct review of the “Gain-Sharing Case,” *Washington Educ. Ass’n, et al. v. State of Washington & Washington St. Dep’t of Ret. Sys.*, Supreme Court Case No. 87424-7.² A key legal issue in the Gain-Sharing Case – the enforcement of the Legislature’s statutory reservation of the right to repeal a pension enhancement it granted – also is presented by this case, as Respondents concede. By granting discretionary review of this case, the Court can treat this case as a companion case to the Gain-Sharing Case, and consider the entire context in which the Legislature incorporated the reservation-of-rights language.³

If the Court of Appeals were to hear this appeal, it could not decide this case as a companion with the Gain-Sharing Case. This would leave open the possibility of two decisions from two different appellate courts with inconsistent results on issues of substantial public importance and financial magnitude.

² See Order of May 1, 2013 (Supreme Court Case No. 87424-7) (Department II “unanimously agreed” to retain *WEA v. DRS* case for hearing and decision).

³ As explained in “Petitioners’ Reply in Support of Companion Treatment,” this Court’s review of this case as a companion case with the Gain-Sharing Case will not meaningfully delay the appeal of the Gain-Sharing Case or cause any prejudice. See Petitioners’ Reply in Support of Companion Treatment (filed May 28, 2013).

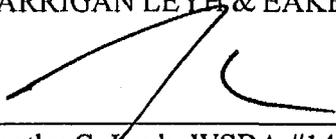
II. CONCLUSION

For the reasons set forth above, the State requests that this Court grant discretionary review of this appeal.

Respectfully submitted this 28th day of May, 2013.

CALFO HARRIGAN LEYH & EAKES LLP

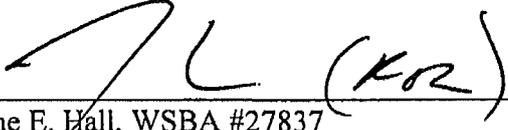
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Subject: RE: Washington Dep. Retirement Systems and State of WA vs. WEA et al. (Supreme Court No. 88546-0)

Rec'd 5/28/2013

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Subject: Washington Dep. Retirement Systems and State of WA vs. WEA et al. (Supreme Court No. 88546-0)

Dear Clerk-

Attached for filing please find the following documents in regard to the above-referenced action:

1. Petitioners' Reply in Support of Motion for Companion Treatment;
2. Petitioners' Reply in Support of Motion for Discretionary Review, and;
3. Certificate of Service.

Thank you,

<<05.28.13 State Certificate of Service.pdf>> <<05.28.13 State Reply Companion Treatment.pdf>> <<05.28.13 State Reply Discretionary.pdf>>

Emma Chapman, Legal Assistant to Timothy Leyh

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