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No. 91494-0

THE SUPREME COURT
OF THE STATE OF WASHINGTON

PATRICIA BLACKBURN, et al.,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON DEP'T OF SOCIAL & HEALTH
SERVICES, et al.,

Defendants/Respondents.

PLAINTIFFS/APPELLANTS' STATEMENT OF ADDITIONAL
AUTHORITIES (IN RESPONSE TO STATE'S STATEMENT)

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Attorneys for Appellants



I. ADDITIONAL AUTHORITIES

The State submits authorities it claims respond to a question from the Court during oral argument as to whether the State may be held liable if it allows employees to perform their regular jobs in the face of a known risk.¹ Plaintiffs submit the following two authorities omitted by the State:

Johnson v. City of Seattle, 474 F.3d 634, 641 (9th Cir. 2007) (holding that state-created danger doctrine applies only when state “exposed the plaintiff to a danger which she otherwise would not have faced” and cannot be invoked where state action did not “enhance[] the dangers” to which the plaintiffs voluntarily “exposed themselves”).

Brame v. Western State Hospital, 136 Wn. App. 740, 150 P.3d 637 (2007) (holding that Western State Hospital is not liable in tort for patient assaults on employees because “the past assaults of hospital patients on hospital staff are not sufficient to create a certainty that any individual patient will assault any individual staff member”).

DATED this 27th day of June, 2016.

MACDONALD HOAGUE & BAYLESS

BY: /s/Jesse Wing
Jesse Wing, WSBA #27751
Joseph R. Shaeffer, WSBA #33273
Tiffany Cartwright, WSBA #43564

¹ It is questionable whether the State’s submission on a topic that was briefed is consistent with RAP 10.8. “We view this rule as being intended to provide parties an opportunity to cite authority decided after the completion of briefing. We do not view it as being intended to permit parties to submit to the court cases that they failed to timely identify when preparing their briefs.” *O’Neill v. City of Shoreline*, 183 Wn. App. 15, 23, 332 P.3d 1099, 1104 (2014). *See* State’s Resp. Br., at page 24 (citing *L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1996)) (actually reversing award to “A female employee [who] was assaulted and injured by a predatory inmate”). But if the Court considers the State’s submission, it should also consider Plaintiffs’ additional authorities addressing the same topic.

DECLARATION OF SERVICE

Esmeralda Valenzuela states and declares as follows:

1. I am over the age of 18, I am competent to testify in this matter, I am a legal assistant employed by MacDonald Hoague & Bayless, and I make this declaration based on my personal knowledge and belief.
2. On June 27th, 2016, I caused to be delivered via email a copy of PLAINTIFFS/APPELLANTS' STATEMENT OF ADDITIONAL AUTHORITIES (IN RESPONSE TO STATE'S STATEMENT), and Proof of Service addressed to:

Allyson Zipp
Joseph M. Diaz
Grace O'Connor
Assistant Attorney General
ATTORNEY GENERAL OF WASHINGTON
Torts Division
7141 Cleanwater Drive SW
PO Box 40126
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Email: TOROlyEF@atg.wa.gov

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

DATED this 27th day of June, 2016 at Seattle, King County, Washington.

/s/Esmeralda Valenzuela
Esmeralda Valenzuela, Legal Assistant

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From: OFFICE RECEPTIONIST, CLERK
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Subject: Case No.: 91494-0 Blackburn et al. v. State of WA DSHS et al.

Dear Court Clerk,

Attached please find *Appellants' Statement of Additional Authorities (In Response to State's Statement)* on behalf of Jesse Wing, Joe Shaeffer and Tiffany Cartwright, counsel of record for Appellants. Counsel can be reached at jessew@mhb.com, josephs@mhb.com and tiffanyc@mhb.com or by telephone at 206/622-1604.

Thank you,

Esmeralda Valenzuela | Legal Assistant to:
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