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No. 93282-4

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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,

vs.

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.

JAMES PURYEAR'S RESPONSE TO AMICUS BRIEF OF
WASHINGTON STATE ASSOCIATION FOR JUSTICE
FOUNDATION

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ORIGINAL

I. INTRODUCTION

The Washington State Association for Justice Foundation (WSAJ) has submitted an amicus brief to address whether there exists an implied statutory cause of action under the Lystedt Act. However, WSAJ specifies it does not address the voluntary immunity or statute of limitations which precludes the liability of James Puryear as a matter of law. While Mr. Puryear agrees with his co-respondents that no statutory cause of action exists or was violated, his Answer to the WSAJ amicus brief is to primarily clarify that Mr. Puryear's dismissal has not been adequately challenged by the Petitioner in the appeal process, and that neither does the WSAJ argument and reasoning impact Mr. Puryear's dismissal below. The Court of Appeals' opinion that Mr. Puryear is not liable as a matter of law should be affirmed, irrespective of the issues being addressed by WSAJ.

II. ARGUMENT

WSAJ concedes that its brief does not address the conclusions the Court of Appeals reached in relation to Mr. Puryear's dismissal, stating that it is not addressing the Court of Appeals' conclusions that:

...3) Puryear is immune from simple negligence under RCW 4.24.670; 4) the claim against Puryear based on the face mask incident constitutes a claim for battery and is thus barred by the two-year statute of limitations under RCW 4.16.100(1)....

WSAJ brief, p. 3, fn. 3.

However, in order to clarify further, RCW 4.24.670 does not limit the immunity it provides to volunteers such as Mr. Puryear to "simple negligence." The statute instead provides:

...a volunteer of a non-profit organization or government entity shall not be personally liable for **harm caused by an act or omission** of the volunteer...

RCW 4.24.670(1) (emphasis added).

To the extent WSAJ's amicus brief suggests that the Court of Appeals limited its decision as to Mr. Puryear's immunity to "simple negligence," it is incorrect. And to the extent the amicus brief purports to address the volunteer immunity of Mr. Puryear other than for "simple negligence," it fails to explain how or why a statutorily implied cause of action would deprive Mr. Puryear of the legislative immunity under the Volunteer Immunity Act. While Mr. Puryear concurs with the co-respondents that no such cause of action exists, the Volunteer Immunity Act is broadly worded to include "any act or omission," which would include any alleged violation of an implied statutory cause of action.

And nothing in the Lystedt Act operates to avoid application of the Volunteer Immunity Act, even were an implied cause of action to exist; no

such legislative intent has been proffered. The fact that the Lystedt Act specifies immunity for a volunteer health care provider for any "act or omission" does not vitiate the immunity otherwise provided in the separate Volunteer Immunity Act, but instead further makes clear that immunity for "an act or omission" **includes** a claimed violation of statute.

Ultimately, the WSAJ amicus brief provides no application of the law that would deprive Mr. Puryear of the volunteer immunity, or provide a basis for a claim barred by the statute of limitations.

V. CONCLUSION

For the foregoing reasons provided in Mr. Puryear's previous briefs, the Court of Appeals' dismissal of all claims against him should be affirmed.

DATED this 5th day of January, 2017



PATRICK J. CRONIN
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Attorneys for Respondent Jim Puryear

DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on the 5th day of January, 2017, at Spokane, Washington, the foregoing was caused to be served on the following person(s) in the manner indicated:

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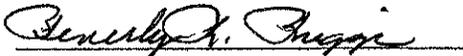
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Documents to be filed: James Puryear's Response to Amicus Brief of Washington State Association for Justice Foundation

Case Name: Swank v. Valley Christian School, et al.

Case No.: 93282-4

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Thank you.

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