

SUPREME COURT OF THE STATE OF WASHINGTON

JOE PATRICK FLARITY, a
marital community,

Petitioner,

v.

STATE OF WASHINGTON, et. al

Respondent.

**STATE’S ANSWER
IN SUPPORT OF
CLERK’S MOTION
TO STRIKE
PETITIONER’S
REPLY TO
ANSWER ON NEW
ISSUE – 57601-5-II**

Respondents State of Washington and Unknown State Officials support the Clerk’s *sua sponte* motion to strike the improper Reply to Answer on New Issue-57601-5-II filed by Joe Partick Flarity, a marital community, (the Flaritys) on October 23, 2024. A reply to an answer is only permitted “if the answering party seeks review of issues not raised in the petition for review.” RAP 13.4(d). Here the Respondents did not seek review of the Court of Appeals decision or raise any new issues for review. *See* Joint Answer to Pet. to Review 57601-5-II at 3-4 (no new issues for review were raised).

The Flaritys erroneously argue that the Respondents raised a new issue on comity. *See* Reply to Answer on New Issue at 2. But responding to arguments made in a petition or discussing reasonably developed issues and arguments raised below is not raising a new issue for purposes of RAP 13.4(d). *See State v. Miller*, 156 Wn.2d 23, 32 & n.5, 123 P.3d 827 (2005) (explaining when a supplemental brief raised new issues for purposes of RAP 13.4 and 13.7).

Here the Respondents' argument on comity responded to the petition's discussion of *Washington Trucking Association v. Employment Security Department*, 188 Wn.2d 198, 393 P.3d 761 (2017). Specifically, the Flaritys argues that the exhaustion of administrative remedies is not required. Pet. for Review at 16-17 (citing *Wash. Trucking*; *Knick v. Twp. of Scott, Pa.*, 588 U.S. 180, 185, 139 S. Ct. 2162, 2167, 204 L. Ed. 2d 558 (2019)). But the Joint Answer points out several reasons the Flaritys' argument lacked merit. First, *Washington Trucking* does not undermine the holding the APA was the exclusive and

invoked means to obtain judicial review of the decision. Furthermore, the Flaritys ignored the actual reasoning of *Washington Trucking*. See Joint Answer to Pet. to Review 57601-5-II at 20-22 (discussing *Wash. Trucking*, 188 Wn.2d at 211-23) (comity restrains 28 U.S.C. § 1983 relief when there is an adequate state remedy, and the Administrative Procedure Act is an adequate state law remedy because it allows constitutional issues to be raised upon judicial review).

Moreover, the arguments on *Washington Trucking* and comity were developed and considered by the courts below. See Brief of Appellant—57601-5 at 10, 30-31, 63-65 (discussing *Wash. Trucking*); Joint Br. of Resp'ts, No. 57601-5 (12/20/23), at 49-50 (discussing *Wash. Trucking*, 188 Wn.2d at 211-23); Reply to State For 57601-5-II at 33-34 (Reply Br. of Appellant, discussing *Wash. Trucking* and comity); see also CP 1528-29 (reply in support of dismissing Flaritys' action discussing *Wash. Trucking*, 188 Wn.2d at 211-23). Because this was a responsive argument relevant to whether the Court should grant

review of the decision to affirm the dismissal of their suit, it is not a new issue for review. Therefore, it was improper for the Flaritys to file a reply, and it is properly stricken.

The Flaritys also attempt to raise additional arguments under the pretext of responding to the Answer, such as service, sanctions, “core rights,” trespass, and tyranny claims, that do not address the discussion in *Washington Trucking*, 188 Wn.2d at 211-23. *See* Reply to Answer on New Issue at ¶¶ 4.1-4.3, 5.2-5.5, 6.1-6.6, 7. However, a reply is limited to addressing *only* the alleged new issues raised in the answer. RAP 13.4(d). Even under the Flaritys’ distorted description of the Answer, the rule does not permit these other off topic arguments. RAP 13.4(d).

In summary, this situation does not permit the Flaritys to file a Reply on comity (or anything else). Petitioner’s Reply to Answer on New Issue—57601-5-II should be stricken.

This document contains 592 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 30th day of
October, 2024.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to be 'R. Ferguson', written over a horizontal line.

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PROOF OF SERVICE

I certify that I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal and thus served the following:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 30th day of October, 2024, at Chehalis, WA.

A handwritten signature in cursive script, appearing to read "Danielle K McFadden", written in dark ink.

Dani McFadden, Paralegal

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

October 30, 2024 - 3:37 PM

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