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STATE OF WASHINGTON
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No. 1033702

SUPREME COURT OF THE STATE OF
WASHINGTON

CITIZEN ACTION DEFENSE FUND, a Washington
nonprofit,

Appellant,

v.

WASHINGTON STATE OFFICE OF FINANCIAL
MANAGEMENT in the OFFICE OF THE
GOVERNOR, an agency of the State of Washington,

Respondent.

Response to Clerk's Motion to Strike

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I. STATEMENT OF ISSUE

The Clerk's motion to strike Petitioner's reply should be denied. The Clerk asserted that reply is not allowed by the rules because the answer does not "seek review of issues not raised in the petition for review." See Appendix A (Clerk's Letter, October 1, 2024). But this interpretation of RAP 13.4(d) is not supported by case law.

II. ARGUMENT

The text of rule 13.4(d) reads, in relevant part:

A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.

RAP 13.4(d). While it appears the Clerk is reading that language to mean "seeks review of issues *by the full court as a petition for review would*," the language permits other interpretations. The type of review that

the Clerk is interpreting the rule to require is more typically called “discretionary review” in the rules. *See, e.g.* RAP 2.3 and 13.4. The more straightforward reading of RAP 13.4(d) is that a reply is permitted where the answer “seeks review *by the department determining what issues merit discretionary review.*”

The Supreme Court has not issued any opinions interpreting this language. The closest it has come was in *Doe v. Gonzaga*, 143 Wn.2d 687, 700 n.8, 24 P.3d 390, 396 (2001), which granted a motion to strike a reply, stating that “[i]n its answer, [Respondent] presented arguments as to why review should be denied. However, [Respondent] did not request that this Court address additional issues.” This does not define new arguments or what level of review is being sought. Nor does *Chevron U.S.A., Inc. v. Hearings Bd.*, 156 Wn.2d 131, 139 n.6, 124 P.3d 640 (2005), which allowed a reply to a

request for attorney fees. Rather, almost all cases that reference this rule at all summarily grant motions to strike, *see, e.g., Bradley v. Globus Med., Inc.*, No. 101212-8, 2022 Wash. LEXIS 636 (Dec. 7, 2022); *Bostain v. Food Express, Inc.*, 156 Wn.2d 1010, 132 P.3d 145 (2006); *Ghodsee v. City of Kent*, No. 100892-9, 2022 Wash. LEXIS 474 (Sep. 7, 2022); *Gray v. Ford Motor Co.*, 157 Wn.2d 1019, 142 P.3d 607 (2006); *United States Tobacco Sales & Mktg. Co. v. Wash. Dep't of Revenue*, 157 Wn.2d 1001, 136 P.3d 759 (2006). In short, there is no authority for interpretation of the rule to mean replies are only permitted where an answer functions as cross-petition for review. If the Court is inclined towards this interpretation, it should do so affirmatively in a published opinion, rather than as an unstated norm to assist the parties and the Clerk in avoiding confusion. However, in the absence of such clarification, the Reply

filed by Petitioner was in compliance with the plain language of the rule.

III. CONCLUSION

For the foregoing reasons, the Clerk's motion to strike the reply should be denied.

Submitted this 15th day of October, 2024.

/s/ JACKSON MAYNARD

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CERTIFICATE OF COMPLIANCE

I certify that this pleading is in 14-point Times New Roman font and contains 497 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, as calculated using Microsoft Word, the word processing software used to prepare this brief, in compliance with the RAP 18.17(b).

Dated this October 15, 2024, at Olympia, WA.

/s/ JACKSON MAYNARD

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on October 15, 2024, I electronically filed with the Court the foregoing document and this declaration of service and served the same by email upon the following:

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Dated this October 15, 2024, at Olympia, WA.

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