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SUPREME COURT CASE No. 1040822

COURT OF APPEALS, DIVISION I CASE No. 868462

SUPREME COURT OF THE STATE OF WASHINGTON

SAMANTHA GERLACH, SUZANNE GERLACH, *et. al*

Petitioners

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT, HOSA, *et al.*

Respondents

PETITIONERS' RESPONSE TO MOTION TO STRIKE
AND A REQUEST FOR CLARIFICATION
TO THE WASHINGTON STATE SUPREME COURT

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I. WSSC's *SUA SPONTE* MOTION TO STRIKE

Despite each Respondent seeking review on new issues to Petitioners' brief to the Washington State Supreme Court ("WSSC"), Deputy Clerk, Reza Pazooki indicated [*sua sponte*] "a Clerk's motion to strike the reply will be set for consideration without oral argument by a Department of the Court as the same time that the Court considers the pending petition for review." Reza Pazooki cited RAP 13.4(d) "[A] reply to an answer to a petition for review may be filed 'only if the answering party seeks review of issues not raised in the petition for review.'" A reply brief was filed because Respondents sought new issues under RAP 13.4(b) specifically claiming, "Petitioners do not assert ... conflict with any published decision ..." Respondents' new issue was application of case law. Petitioners correctly identified a conflict in law by the Court of Appeals ("COA"). COA's failure to apply *Alaska Structures v Hedlund* 180 Wash.App. 591, 323 P.3d 1082 (2014) to Respondents' "private grievance" requires discussion by the WSSC. COA's decision improperly redefined a "matter of public concern" to include "private grievances" and overturned *Alaska Structure v Hedlund* in an effort to affirm Judge Jennifer Forbes' flawed orders without discussion.

Despite WSSC's *sua sponte* motion to strike, Petitioners' reply brief was also proper because Respondents raised a new issue under "substantial public interest that should be determined by the Supreme Court." [RAP 13.4(d)(4)] It is of paramount concern to all male, white/other, Section 504 of the Rehabilitation Act of 1973 students that the COA appears to protect perpetrators of cyber-harassment in Washington State over victims.

COA's decision exonerated RCW 28A.600.477. After Petitioners reported the harassment, intimidation and bullying to school officials, Petitioners were targeted with reprisal, retaliation and false accusations in violation of RCW 28A.600.480. COA's decision obliterated RCW 28A.600, based on a misconstrued anti-Trump rally that never mentioned any of the Petitioners, as the basis for monetary penalties and sanctions against Petitioners.

The Office of Superintendent of Public Instruction ("OSPI"), defended by Washington State Attorney General, Robert Ferguson, previously claimed "The harms [verified cyber-harassment] he has alleged are...imaginary..."(OSPI Motion to Dismiss March 13, 2023; Pg 7 ln 3 emphasis added)WSSC denied review in *M.G. v Bainbridge Island School Dist.* 4 Wash.3d 1002 (2025). Robert Ferguson is now the state's governor.

II. A SIGNIFICANT CONSTITUTIONAL QUESTION

Under RAP 13.4 a reply is permitted where new issues are raised in the Answer. Respondents' brief raised new issues regarding "significant questions of law under the Constitution of the State of Washington." (RAP 13.4(d)(3)) Article 1, Section 5 of the Washington State Constitution guarantees freedom of speech so long as every person is "responsible for the abuse of that right."

COA's decision determined free speech was absolute. COA redefined the Washington State Constitution to permit false speech regardless of responsibility for false, malicious and defamatory accusations. Respondents raised a new issue [RAP 13.4 (d)] that was expressly contradicted by the Washington State Constitution [RAP13.4(d)(4)]. The WSSC is charged with resolving conflicts between conflicting interpretations of the Washington State Constitution.

If the Washington State Constitution was improperly amended by the COA's decision, WSSC review is mandated. Cases involving conflicting interpretations regarding the Washington State Constitutional issue are matters of public concern.

III. PENDING/OUTSTANDING MOTIONS TO STRIKE

Petitioners filed a motion to strike pursuant to RAP 10.8 on January 27, 2025 with the COA. COA's Commissioner Masako Kanazawa ignored, or inconsistently applied the legal standards for a motion to strike, regarding Petitioners' motion to strike.

Petitioners raised this issue in the Petition for Review as the motion is still pending a decision by the COA's Commissioner.

Petitioners again filed a motion to strike pursuant to RAP 10.8 on February 21, 2025. COA's Commissioner Masako Kanazawa ignored Petitioners' motion to strike. Petitioners raised this issue in the Petition for Review as the motion is still pending a decision by the COA's Commissioner.

WSSC's *sua sponte* motion to strike appeared apply a different legal standard and was in conflict with COA's commissioner.

Petitioners seek clarification regarding the application of RAP 10.8 by the COA and application of RAP 13.4 *sua sponte* by the WSSC. Inequitable application of the RAP is an issue of substantial public interest. This is a matter of public interest and public concern.

IV. CONCLUSION

Respondents raised new issues in their Answers for WSSC to consider. WSSC's *sua sponte* motion to strike will avoid discussion of these new issues. Petitioners filed their reply brief pursuant to RAP 13.4(d). Additionally, Petitioners seek clarification regarding the apparent inconsistent application of RAP 10.8 by the COA and *sua sponte* motions to strike by the WSSC.

Dated June 23, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document contains 795 words, excluding the parts of the document exempted by RAP 18.17.

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