IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

MARCUS GERLACH AND SUZANNE GERLACH , Plaintiffs-Appellants, v. CITY OF BAINBRIDGE ISLAND, A MUNICIPAL CORPORATION, Respondent.	No. 1040849 RESPONDENT CITY OF BAINBRIDGE ISLAND'S RESPONSE TO APPELLANTS' MOTION TO SUPPLEMENT THE RECORD

I. THE LEGAL STANDARD

The Rules of Appellate Procedure provide that "additional evidence," beyond the record, can be considered only when:

> (1) additional proof of facts is needed to fairly resolve the issues on review,
>
> (2) the additional evidence would probably change the decision being reviewed,

> (3) it is equitable to excuse a party's failure to present the evidence to the trial court,
>
> (4) the remedy available to a party through post-judgment motions in the trial court is inadequate or unnecessarily expensive,
>
> (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and
>
> (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

RAP 9.11(a). "All" of these elements must be met. *Pub. Hosp. Dist. No. 1 of King Cnty. v. Univ. of Washington*, 182 Wn. App. 34, 50, 327 P.3d 1281 (2014); *see also White v. Skagit Cnty.*, 188 Wn. App. 886, 903, 355 P.3d 1178 (2015) (declining to supplement when evidence at issue was "not needed to fairly resolve the issue on review").

RAP 10.8 governs additional authorities and requires the authorities be directly related to a point made in the prior briefing, with pinpoint citations to the brief (or oral argument, which is not relevant here since the Court of Appeals ruled without oral argument). RAP 10.8(a)-(b).

II. THIS COURT NEED NOT ENGAGE WITH MR. GERLACH'S ANIMOSITIES TOWARD A DIFFERENT APPELLATE PANEL, IN A DIFFERENT CASE

Accepting Mr. Gerlach's filing at face value, he appeared before Division I of the Court of Appeals in an entirely different case,[1] [2] and presented argument that the panel received as a "serious threat" toward their adult children. Supp. at 1. The Court also denied reconsideration (of the unknown decision), because Mr. Gerlach's motion was untimely, and has not entertained demands for another hearing regarding oral argument in yet another case he filed against the Bainbridge

[1] It is difficult to tell precisely what case Mr. Gerlach is referring to because he does not provide citations to any of the documents he quotes (or copies of the documents themselves). But it appears to be either *M.G. Bainbridge Is. School Dist. # 303*, 34 Wn. App.2d 51, 566 P.3d 132 (2025) or *Gerlach v. Bainbridge Island Sch. Dist. #303*, 34 Wash. App. 2d 1006 (2025) (unpublished), both arise from the same lawsuit. The panel in both decisions was comprised of Judges Coburn, Hazelrigg and Bowman. Judge Coburn wrote the opinions.

[2] The panel in our case was comprised of Judges Mann, Coburn and Chung. Judge Mann wrote the opinion, resolving the appeal without oral argument.

Island School District (involving the Public Records Act). *See* Supp. at 1-2, App. A-C. From this, Mr. Gerlach posits that the Court of Appeals acted with "malice and malevolence" and "violated the Code of Judicial Conduct."

Suffice it to say, none of this bears on the present appeal; and certainly does not satisfy RAP 9.11(a).

First, the new "evidence" *cannot* change the outcome. Mr. Gerlach's animosities with the Court of Appeals have nothing to do with whether there is a conflict with any holdings of this Court, a divisional split, issues of constitutional dimension, or substantial public interest. *See* RAP 13.4(b). Nor do these tensions (again, in another case), bear on the propriety of the trial court's entry of summary judgment here.

Second, post-judgment remedies are not implicated because this Court will either accept review and perform its own *de novo* analysis of the record; or this Court will decline review, and the affirmed decision of the trial court will stand.

What another panel of the Court of Appeals did, in another case, implicates no rights or remedies in this case at all.

Third, no equities favor Mr. Gerlach. *See* RAP 9.11(a)(3); (6). That his argument in Division I could be received as a threat to the judges' children—even if inadvertent—is entirely his fault. He deserves no benefit, advantage, or remedy for that. *Cf. Goodwin Co. v. Nat'l Disc. Corp.*, 5 Wn.2d 521, 529, 105 P.2d 805 (1940) ("he who seeks equity must do equity").[3]

[3] In addition to satisfying no part of RAP 9.11, there is also a practical problem. The rule contemplates *development* of "additional evidence," not acceptance of new factual claims at face value. This makes sense because, if the Court were going to not just assume lawless conduct by the Court of Appeals—based solely on Mr. Gerlach's unsupported accusations—but treat the issue as outcome-dispositive under RAP 9.11(a)(2)—the City would have no way of substantively responding. Judges, after all, "are under no obligation to divulge the reasons that motivated them in their official acts; the mental processes employed in formulating the decision may not be probed." *In re Disciplinary Proceeding Against Sanai*, 167 Wn.2d 740, 752, 225 P.3d 203 (2009). In other words, accepting Mr. Gerlach's accusations of bad motives, leaves the City no practical way of proving good motives.

Each of these reasons are dispositive. All of them together overwhelmingly confirm that this motion should be denied. Likewise, Mr. Gerlach's request to supplement with additional authorities, namely the Judicial Code of Conduct, should be denied. None of the additional authorities he cites, which relate to conduct of a "surrogate" of the Court of Appeals in a different appeal, have anything to do with any point made in either party's briefing here.[4] RAP 10.8(a).

III. CONCLUSION

The City respectfully requests that the Court disregard Mr. Gerlach's latest submission. His tensions with Division I, in another case, have no bearing on the issues being appealed, nor on the relevant legal standard. This motion, and review generally, should be denied.

[4] Nor does Mr. Gerlach include pinpoint cites to any briefing as required by RAP 10.8(b).

I hereby certify that this document contains 997 words in accordance with RAP 18.17(b), (c)(17).

DATED this 27th day of August, 2025.

KELLER ROHRBACK L.L.P.

By *s/ Holly E. Lynch*

Holly E. Lynch, WSBA #37281
Adam L. Rosenberg, WSBA #39256
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3268
Tel: (206) 623-1900
Fax: (206) 623-3384
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2025, I caused to be served a true and correct copy of the foregoing on the following recipients via the method indicated:

Marcus Gerlach (WSBA #33963) Suzanne Gerlach 579 Stetson Place S.W. Bainbridge Island WA 98110 Msg2x4@yahoo.com sam.m.gerlach@gmail.com *Pro Se Plaintiffs*	☐ Via Hand Delivery ☒ Via U.S. First Class Mail ☒ Via the Court's Portal ☒ Via E-mail
Zach Lell (WSBA #28744) Drew Pollom (WSBA #49632) OGDEN MURPHY WALLACE 901 5th Avenue Suite 3500 Seattle WA 98164 zlell@omwlaw.com dpollom@omwlaw.com lvandiver@omwlaw.com *Co-Counsel for City of Bainbridge Island*	☐ Via Hand Delivery ☐ Via U.S. First Class Mail ☒ Via the Court's Portal ☒ Via E-mail

DATED this 27th day of August, 2025 at Seattle, Washington.

s/ Leona Flasch
Leona Flasch, Legal Assistant
206.623.1900
lflasch@kellerrohrback.com

KELLER ROHRBACK L.L.P.

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