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 RESPONSE TO APPELLANTS' OPPOSITION TO THE COURT'S MOTION TO STRIKE REPLY

I. APPELLANTS' REPLY SHOULD BE STRICKEN BECAUSE RESPONDENT DID NOT SEEK REVIEW OF ANY ASPECT OF THE COURT OF APPEALS' DECISION.

Defendant City of Bainbridge Island (the "City") agrees with this Court's assessment; appellants Marcus and Suzanne Gerlach's reply should be stricken under RAP 13.4(d). A reply is only allowed when the respondent, here the City, seeks

review of an issue not raised in the petition for review. RAP 13.4(d). The City did not request review of any issue, instead it argued that review is not warranted because the Court of Appeals properly upheld the trial court's dismissal of the Gerlachs' claims. Thus, no reply is allowed.[1]

In their response to the Court's motion to strike the reply, the Gerlachs misconstrue RAP 13.4(d) to claim that by arguing that the Gerlachs did not meet the standard for discretionary review under RAP 13.4(b), the City was somehow seeking review of the Court of Appeals' holding. It was not. Addressing the failure to meet the discretionary review standard is not a challenge to any aspect of the underlying decision. It is a response to the petition for review itself and addresses *the*

[1] The City did ask this Court to grant it fees and costs incurred responding to the petition for review. But even if the fee request constituted a "new issue" under RAP 13.4(d)—which it is not—the Gerlachs did not address it in their reply. Thus, the fee request would not justify their reply. *See* RAP 13.4(d) (reply must be limited to *responding to the new issue*).

issue before the Court: whether review is warranted under RAP 13.4(b).

But even if the City's discussion of why review isn't warranted under the applicable rules somehow raised a new issue—and it did not—the Gerlachs' reply is still improper. As noted, RAP 13.4(d) limits a reply to the new issue(s) for review raised by the answering party. The Gerlachs' reply has very little connection to the City's RAP 13.4(b)-related arguments. Instead, it (and the Gerlachs' response to the Court's motion to strike) is largely an impermissible reiteration of prior briefing (with some added irrelevant arguments about unrelated cases).

Nor may the Gerlachs smuggle in new grounds for review, like "substantial public interest" (for the first time and without citation to RAP 13.4(b)), via reply brief.[2] RAP 13.4(d)

[2] Using quotations purportedly from the City's answering brief, the Gerlachs further falsely claim that the City argued that "fraudulent affidavits and an altered official map is not a 'substantial public interest' matter." Reply at 6 (citing to the City's answering brief at 13). The City did not make that statement. Rather, it quoted RAP 13.4(b) and correctly said

is not a mechanism for fixing deficient petitions for review. There is no second bite of the apple and the Gerlachs cannot raise new grounds for review in a reply, which is precisely what they attempted to do here. *See, e.g., Budd v. Kaiser Gypsum Company, Inc.*, 21 Wn. App.2d 56, 80, 505 P.3d 120 (2022) (refusing to consider issue appellant did not raise until its reply brief).

II. CONCLUSION

This Court was correct when it determined that a motion to strike the Gerlachs' reply was appropriate. As the Court noted, the City's answering brief did not seek review of new issues. Thus, RAP 13.4(d) prohibits the Gerlachs' reply, which should thus be stricken.

I hereby certify that this document contains 575 words in accordance with RAP 18.17.

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that the Gerlachs failed to cite to the rule or present coherent arguments supporting review.

DATED this 2nd day of July, 2025.

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Comments:

This is in response to Appellants' opposition to the Court's motion to strike their reply brief.

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