

No. 93620-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

STACIA HARTLEBEN, an  
individual,

Appellant,

v.

UNIVERSITY OF  
WASHINGTON,

Respondent.

MOTION TO STRIKE REPLY  
TO ANSWER TO PETITION  
FOR REVIEW

**A. Relief Sought By Moving Party.**

Respondent University of Washington asks the Court to strike Petitioner Stacia Hartleben's Reply to Answer to Petition for Review.

**B. Argument And Grounds For Relief.**

"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." RAP 13.4(d) (emphasis added); *Oltman v. Holland Am. Line USA*,

*Inc.*, 163 Wn.2d 236, 261 n.17, 178 P.3d 981 (2008) (“The answer does not raise any new issues and a reply is therefore not authorized by the rules of appellate procedure.”). The University has not sought review of any issue, but has asked the Court to deny review entirely. (Answer at 1, 20) Hartleben’s reply is barred by RAP 13.4(d) and should be stricken.

Hartleben assertion the “University raises an issue not mentioned by the Court of Appeals” is not grounds for filing a reply. (Reply at 1) As additional support for the Court of Appeals decision, the University argued that the Washington Law Against Discrimination does not require places of public accommodation to provide retroactive “accommodation” of disabilities. (Answer at 17-20) But the University did not seek review on this basis (or any other basis). The Rules of Appellate Procedure do not authorize a reply simply because a respondent raises additional reasons for denying review. *See* 3 Wash. Prac., Rules Practice RAP 13.4 (7th ed.) (Drafters’ Comment to 2006 Amendment of RAP 13.4: noting that amendment was intended to stop “abuse by petitioning parties who attempt to cast an answering party’s arguments in response to a petition for review as ‘new issues’ in order to reargue issues raised in the petition”); *see also LK Operating, LLC v. Collection Grp.*,

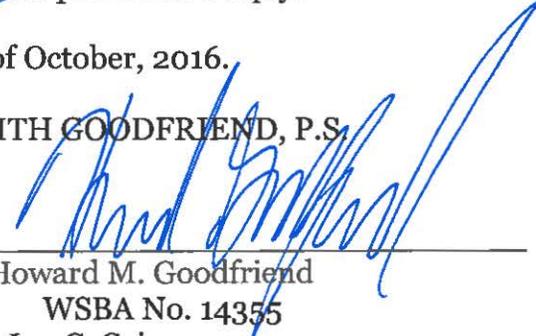
*LLC*, 181 Wn.2d 48, 73, 331 P.3d 1147 (2014) (“an appellate court may affirm a decision on any ground supported by the record”).

**C. Conclusion.**

This Court should strike petitioner’s reply.

Dated this 5<sup>th</sup> day of October, 2016.

SMITH GOODFRIEND, P.S.

By: 

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 5, 2016, I arranged for service of the foregoing Motion to Strike Reply to Answer to Petition for Review, to the court and to counsel for the parties to this action as follows:

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Skylar Sherwood Kristine Markosova Riddell Williams PS 1001 Fourth Avenue, Suite 4500 Seattle, WA 98154 <a href="mailto:ssherwood@riddellwilliams.com">ssherwood@riddellwilliams.com</a> <a href="mailto:kmarkosova@riddellwilliams.com">kmarkosova@riddellwilliams.com</a> <a href="mailto:jmatautia@riddellwilliams.com">jmatautia@riddellwilliams.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Laura Allen Allen & Mead PLLC 2311 N. 45th St. #196 Seattle, WA 98193 <a href="mailto:lauraallen@allenmead.com">lauraallen@allenmead.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 5<sup>th</sup> day of October, 2016.

  
Jenna L. Sanders

**SMITH GOODFRIEND, PS**

**October 05, 2016 - 3:04 PM**

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