

IN THE  
SUPREME COURT OF THE UNITED STATES

---

Nos. 05-1589, 05-1657

---

GARY DAVENPORT, *et al.*,  
*Petitioners*,

v.

WASHINGTON EDUCATION ASSOCIATION,  
*Respondent*.

---

WASHINGTON,  
*Petitioner*,

v.

WASHINGTON EDUCATION ASSOCIATION,  
*Respondent*.

---

On Writs of Certiorari to the  
Supreme Court of Washington

---

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

---

Respondent Washington Education Association (“WEA”)<sup>1</sup> respectfully moves the Court, pursuant to Supreme Court Rule 25.5, for leave to file a supplemental brief in order to bring to the Court’s attention newly enacted legislation amending the statute that is at issue in this matter. In support of its motion, WEA states as follows.

1. These consolidated cases were argued and taken under submission on January 10, 2007.
2. The question presented is the constitutionality of Wash. Rev. Code § 42.17.760 (“Section 760”). WEA contends, and the Washington Supreme Court held in the decision that is

---

<sup>1</sup> Corporate Disclosure Statement: WEA is organized as a nonprofit corporation. It has no parent corporation, and no publicly held company owns any stock in it.

under review, that Section 760 is contrary to the First Amendment to the United States Constitution.

3. On May 11, 2007, Washington Governor Christine Gregoire signed into law House Bill 2079, which amends Section 760 in a way that, as more fully set forth in the supplemental brief, affects the constitutional analysis. WEA does not contend that the statute as amended is unconstitutional.

4. Although the amendment to Section 760 does not moot the case, because both retrospective and prospective applications of the statute are at issue in this litigation, the Court may wish to take account of the amendment in determining its disposition of this matter.

5. For this reason, WEA seeks leave to file its supplemental brief in order to apprise the Court of this legislative development.

6. Forty copies of the proposed supplemental brief are tendered with this motion.

For these reasons, WEA respectfully requests that this motion be granted and that the proposed supplemental brief be filed.

Respectfully submitted,

---

JOHN M. WEST  
*(Counsel of Record)*  
JEREMIAH A. COLLINS  
LAURENCE GOLD  
Bredhoff & Kaiser, P.L.L.C.  
805 Fifteenth Street, N.W.  
Suite 1000  
Washington, DC 20005  
(202) 842-2600

JUDITH A. LONNQUIST  
1218 Third Avenue, Suite 1500  
Seattle, WA 98101  
(206) 622-2086

HARRIET STRASBERG  
3136 Maringo Road SE  
Olympia, WA 98501  
(360) 754-0304

*Counsel for Respondent*

IN THE  
SUPREME COURT OF THE UNITED STATES

---

Nos. 05-1589, 05-1657

---

GARY DAVENPORT, *et al.*,  
*Petitioners*,

v.

WASHINGTON EDUCATION ASSOCIATION,  
*Respondent*.

---

WASHINGTON,  
*Petitioner*,

v.

WASHINGTON EDUCATION ASSOCIATION,  
*Respondent*.

---

On Writs of Certiorari to the  
Supreme Court of Washington

---

CERTIFICATE OF SERVICE  
OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

---

Undersigned counsel for respondent, a member of the Bar of this Court, certifies that all parties required to be served have been served with the Motion for Leave to File Supplemental Brief, in compliance with Supreme Court Rule 29(3), in that three copies of the petition were served on counsel of record for petitioners and for the United States, this 11th day of May, 2007, by third-party commercial carrier for delivery within three calendar days, addressed as follows:

Milton L. Chappell  
National Right to Work Legal Defense Foundation, Inc.  
8001 Braddock Road  
Suite 600  
Springfield, VA 22160  
(703) 321-8510

William B. Collins  
Deputy Solicitor General  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504-0100  
(360) 753-6245

Paul D. Clement  
Solicitor General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530-0001  
(202) 514-2217

---

John M. West