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# THE SUPREME COURT

STATE OF WASHINGTON



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May 31, 2012

## LETTER SENT BY E-MAIL ONLY

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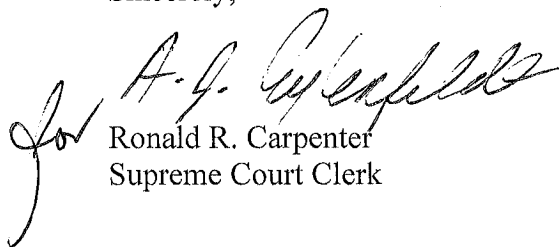
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Re: Supreme Court No. 87198-1 - Adora Svitak, et al. v. State of Washington, et al.  
King County Superior Court No. 11-2-16008-4 SEA

Counsel:

Enclosed is a copy of the RULING DENYING MOTION TO STRIKE, signed by the  
Supreme Court Commissioner, Steven Goff, on May 31, 2012, in the above entitled cause.

Sincerely,

  
Ronald R. Carpenter  
Supreme Court Clerk

RRC: daf

Enclosure



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ADORA SVITAK, a minor child, by and through her guardian, JOYCE SVITAK; TALLYN LORD, a minor child, by and through his guardians, JUSTIN LORD and SARA WETSTONE; HARPER LORD, a minor child, by and through his guardians, JUSTIN LORD and SARA WESTONE; ANNA IGLITZIN, a minor child, by and through her guardians, DMITRI IGLITZIN and EILEEN QUIGLEY; JACOB IGLITZIN, a minor child, by and through his guardians, DMITRI IGLITZIN and EILEEN QUIGLEY; COLIN SACKET, a minor child, by and through his guardians, BJ CUMMINGS and TOM SACKETT,

Appellants,

v.

STATE OF WASHINGTON, CHRISTINE GREGOIRE, in her official capacity as Governor of Washington state; TED STURDEVANT, in his official capacity as Director of the Department of Ecology; PETER GOLDMARK, in his official capacity as Commissioner of Public Lands; PHIL ANDERSON, in his official capacity as Director of the Department of Fish & Wildlife,

Respondents.

NO. 87198-1

RULING DENYING  
MOTION TO STRIKE

FILED

MAY 31 2012

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

This is a direct appeal from an order of the King County Superior Court dismissing a declaratory judgment action claiming a "breach of the state's fiduciary obligation to protect the atmosphere and other public trust resources from the effects

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of climate change.” Appellants (several minor children through their guardians) have filed a statement of grounds for direct review (RAP 4.2(b) and (c)) to which they have attached, among other things, a “Declaration of Dr. James Hansen in Support of Appellant’s Request for Direct Review by the Washington State Supreme Court,” which in turn has its own attachment, a paper by Dr. Hansen. Respondents (Governor Christine Gregoire, the directors of the Department of Ecology and the Department of Fish and Wildlife, the commissioner of public lands, and the State) move to strike the Hansen declaration on the ground that it constitutes evidence that was not before the trial court. In reply, appellants acknowledge that the declaration is not properly before the court as evidence, but urge that it can appropriately be considered on the question whether the appeal has sufficient import to warrant direct review.

As appellants suggest, material that is not strictly part of the record may nonetheless be relevant to the court’s decision whether to accept direct review. Sometimes that material is appropriately conveyed by an appendix to a statement of grounds for direct review. *See Dioxin/Organochlorine Ctr. v. Dep’t of Ecology*, 119 Wn.2d 761, 769-70, 837 P.2d 1007 (1992). The submission of Dr. Hansen’s declaration for that purpose was not improper, though I suspect that the court’s decision whether to afford direct review will be informed more by the parties legal arguments than by Dr. Hansen’s declaration. This does not mean, of course, that the declaration can properly be referred to in appellants’ briefs on the merits; the appeal will be decided based upon the actual record brought from the trial court.

The motion to strike is denied.

  
COMMISSIONER

May 31, 2012