

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

ZOE & STELLA FOSTER, minor children by and through their guardians MICHAEL FOSTER and MALINDA BAILEY; AJI & ADONIS PIPER, minor children by and through their guardian HELAINA PIPER; WREN WAGENBACH, a minor child by and through her guardian MIKE WAGENBACH; LARA FAIN, a minor child by and through her guardian MONIQUE DINH; GABRIEL MANDELL, a minor child by and through his guardians VALERIE and RANDY MANDELL; JENNY XU, a minor child by and through her guardians YAN ZHANG & WENFENG XU,

Petitioners,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

No. 14-2-25295-1 SEA

MOTION FOR LEAVE TO FILE
REPLY BRIEF

1 **I. RELIEF REQUESTED**

2 In this administrative law review case, ZOE & STELLA FOSTER, AJI & ADONIS
3 PIPER, WREN WAGENBACH, LARA FAIN, GABRIEL MANDELL, and JENNY XU
4 (collectively “Youth Petitioners”) appeal of the Washington Department of Ecology’s
5 (“Ecology’s”) denial of their Petition for Rulemaking (“Petition”). Because the Youth
6 Petitioners have the burden of proof in this case, Youth Petitioners respectfully request that the
7 Court grant them leave to file a reply brief to respond to Ecology’s arguments raised in its last
8 brief filed with the Court. Youth Petitioners’ reply brief is being filed concurrently with this
9 motion.
10

11 **II. STATEMENT OF FACTS**

12 On August 7, 2015, Ecology responded to the Court’s June 23, 2015 order directing it
13 to reconsider its decision denying Youth Petitioners’ petition for rulemaking based upon the
14 December 2014 report and Dr. Kharecha’s declaration. On August 12, 2015, the Court issued
15 a Show Cause Order authorizing Youth Petitioners to submit a brief to the court explaining to
16 the Court “why their appeal should not be dismissed at this time.” On August 25, 2015, Youth
17 Petitioners filed their Response to the Court’s Show Cause Order. On September 3, 2015, the
18 Court issued an Order on Briefing and Hearing Schedule, directing Ecology to respond to
19 Youth Petitioners’ Response to the Court’s Show Cause Order on or before October 2, 2015
20 and setting oral argument for October 30, 2015. Ecology filed their response on October 2,
21 2015.
22
23

24 **III. STATEMENT OF ISSUE**

25 Whether the Court should grant Youth Petitioners’ Motion to for Leave to File a Reply
26 Brief.

1 **IV. AUTHORITY**

2 “[I]t is the proper function of the trial court to exercise its discretion in the control of
3 litigation before it.” *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 777, 819 P.2d 370
4 (1991). This case involves several complex and novel legal issues and the Agency Record
5 before the court consists of several hundred pages of scientific information regarding climate
6 change. In its October 2, 2015 response brief, Ecology restates some of the same arguments
7 asserted in earlier briefs, but also makes new arguments as well. Because this is an
8 administrative law review case, Youth Petitioners have the burden of proving that Ecology
9 acted in violation of the law. RCW 34.05.570(1)(a) (“The burden of demonstrating the
10 invalidity of agency action is on the party asserting invalidity.”). For that reason, it is
11 reasonable and in the interests of justice for Youth Petitioners to have an opportunity to file a
12 reply brief in this case. Ecology would not be prejudiced by the filing of the reply brief and
13 will have an opportunity to address any of the arguments raised in the reply brief at oral
14 argument.
15
16

17 **V. CONCLUSION & REQUEST FOR RELIEF**

18 For the reasons set forth above, Youth Petitioners respectfully request that the Court
19 grant its Motion for Leave to File a Reply Brief.

20 Respectfully submitted this 22nd day of October, 2015.
21

22 *s/ Andrea K. Rodgers*

23 Andrea K. Rodgers, WSBA #38683
24 Western Environmental Law Center
25 3026 NW Esplanade
26 Seattle, WA 98117
T: (206) 696-2851
Email: rodgers@westernlaw.org
Attorney for Youth Petitioners