

Nos. 05-1589, 05-1657

---

---

IN THE  
**Supreme Court of the United States**

—————  
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**

—————  
**SUPPLEMENTAL BRIEF OF RESPONDENT**

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

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

*Counsel for Respondent*

## **CORPORATE DISCLOSURE STATEMENT**

Respondent Washington Education Association is organized as a nonprofit corporation. It has no parent corporation, and no publicly held company owns any stock in it.

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**

---

**SUPPLEMENTAL BRIEF OF RESPONDENT**

---

Respondent Washington Education Association (“WEA”) submits this supplemental brief to bring to the Court’s attention a recent amendment by the Washington legislature to Wash. Rev. Code § 42.17.760 (“Section 760”), the statute whose constitutionality is at issue here.

Section 760 specifies circumstances under which it is unlawful for a labor union to “use” agency shop fees for expenditures related to influencing elections and supporting

political committees. At trial of this matter, the case turned on a statutory interpretation question concerning the meaning of the term “use.” Specifically, the issue was whether a union’s use of its general treasury funds—consisting primarily of monies derived from member dues, and only secondarily of revenues from agency fees—to make electoral expenditures constituted a “use” of the agency fees for those expenditures, where the union’s revenues from sources other than agency fees were more than sufficient to fund the expenditures. *See* Pet. App. 53a-54a; Brief for Respondent at 10-11. The trial court answered that question in the affirmative, and on that basis held that WEA had violated Section 760’s proscription. *Id.* While WEA challenged this ruling on appeal, the state appellate courts—which held for WEA on other grounds—did not reach this question of statutory interpretation. *See id.* at 12-15.

On May 11, 2007, Governor Christine Gregoire signed into law House Bill 2079, which adds one sentence to Section 760 to clarify the meaning of the statutory term “use.” Rejecting the trial court’s expansive reading of this term that was the predicate for the finding of a Section 760 violation in this case, the amendment reads in full as follows:

A labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures.

H.R. 2079, § 1, 60th Leg., 2007 Reg. Sess. (Wash. 2007).

Respondent WEA does not question the constitutionality of Section 760 as so amended. Indeed, WEA urged the courts below to read Section 760’s operative term “use” along the lines of the statutory gloss provided by House Bill 2079 in order to avoid any question of the statute’s constitutionality. *See* WEA Opening Brief (Wash. Ct. App.) at 20-21; WEA Supplemental Brief (Wash. Sup. Ct.) at 16-17.

The legislative action amending Section 760 does not moot this case, but it does mean that a ruling on the constitutionality of *unamended* Section 760 will control only as to the statute's retrospective application.

Respondent WEA continues to urge that the judgment below be affirmed.

Respectfully submitted,

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

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

*Counsel for Respondent*