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SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court No. 100,992-5

Court of Appeals No. 55,915-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

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Gene Gonzales and Susan Gonzales, Horwath Family  
Two, LLC, and the Washington Landlord Association,

Appellants

v.

Governor Jay Inslee and State of Washington,

Respondents.

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**Appellants' Response to Statement of Additional  
Authorities**

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## Introduction

Pursuant to RAP 10.8(c), Appellants file this response to Respondents' Statement of Supplemental Authority, offering *Seaplane Adventures, LLC v. County of Marin*, --- F.4th---, Nos. 21-17105, 22-15027, 23 WL 4169608 (9th Cir. June 26, 2023). Apart from the fact that *Seaplane Adventures* was related to COVID-19, the legal claim was quite different than the claims pending before this Court.

***Seaplane Adventures* does not support Respondents' resolution of the constitutional issues in this case.**

The Court in *Seaplane Adventures* was reviewing an equal protection clause claim. *Id.* at \*4. Such claims required intentional, different treatment without a rational basis. *Id.* The portion quoted by Respondents is the part of the decision dealing with whether the government's treatment of the plaintiff had a rational basis. *Id.* at \*5. Respondents urge this Court to give them "similar latitude

and deference to the Governor's Proclamation 20-19."

Resp. Stmt. Of Suppl. Authority, at 2.

There is no similar basis for latitude and deference for at least two of the claims made by Appellants.

Government is not immune from the responsibility to pay for property interests that it takes, even temporarily, simply because the taking was a good idea or could be considered "rational." See *Levin v. City and County of San Francisco*, 71 F.Supp.3d 1072, 1074-75 (N.D. Cal. 2014).

Regardless of the reason, if the government takes property interests, it must pay for them.

The same is true with the interference with the judiciary claim. The Legislature or Governor may have a rational basis for wanting to take actions that affect the judiciary's powers, but interference with the judiciary is unconstitutional regardless of a showing of a mere rational basis.

The claims in *Seaplanes Adventures* were rejected because of a rational basis for the different treatment by the government alleged in that case. Appellants' claims here are not affected by the extent of rationality of the government's actions, unlike claims regarding differing treatment of people or their circumstances where rationality is critical.

### **Conclusion**

Respondents' supplemental authority does not affect resolution of this case.

The undersigned certifies that this answer contains 340 words in compliance with RAP 10.8(c).

Respectfully submitted this 6th day of July 2023, by

STEPHENS & KLINGE LLP

/s/ Richard M. Stephens

Richard M. Stephens, WSBA 21776

Attorneys for Petitioners and  
Appellants Below

## **Declaration of Service**

I, Richard M. Stephens, declare as follows pursuant to GR 13 and RCW 9A.72.085 that counsel for Respondents was served through the Court's electronic filing portal on July 6, 2023.

Executed this 6th day of July 2023, at Woodinville, Washington.

*/s/ Richard M. Stephens*  
Richard M. Stephens

# STEPHENS & KLINGE LLP

July 06, 2023 - 10:41 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,992-5  
**Appellate Court Case Title:** Gene and Susan Gonzales, et al. v. Jay Inslee and State of WA  
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