

SCHAERR DUNCAN

LLP

January 19, 2017

Denise McNerney
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

RE: *Gloucester County School Board v. G.G. ex rel. Grimm*, No. 16-273

Dear Ms. McNerney,

I write on behalf of Petitioner Gloucester County School Board (“Board”) in response to Respondent’s letter of January 18, 2017, seeking leave under Supreme Court Rule 32.3 to lodge non-record materials respecting Respondent’s amended birth certificate. The Board opposes Respondent’s request.

It is well established that this Court does not base its decisions on matters outside the record. See, e.g., *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 235 (1990) (“[W]e may not rely on the city’s affidavit, because it is evidence first introduced to this Court and ‘is not in the record of the proceedings below.’”) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157–58, n. 16 (1970)); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 278 n.5 (1986) (plurality) (taking issue with dissent’s “unprecedented reliance on nonrecord documents that respondent has ‘lodged’ with this Court”); *Witters v. Wash. Dep’t of Servs. for the Blind*, 474 U.S. 481, 486, n. 3 (1986) (“[T]his Court must affirm or reverse upon the case as it appears in the record”). This rule bars consideration of any amended birth certificate and related materials, which, as Respondent’s letter admits, “were issued after the Fourth Circuit and district court issued their rulings.” Ltr. at 1.

Respondent’s letter offers no reason for disregarding that settled rule. *First*, Respondent asserts without explanation that the materials are “relevant,” but “relevance” is no reason to consider extra-record materials. *Second*, even assuming relevance matters, Respondent offers no explanation why the materials are, in fact, relevant. There is good reason for that: *none* of the various legal positions taken below—whether by the Board, the district court, the Fourth Circuit, the Department of Education, or Respondent—turn on Respondent’s birth certificate. *Third*, Respondent has unaccountably delayed bringing this matter to the Court’s attention. Respondent’s letter claims that a county court directed issuance of the

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amended certificate on September 9, 2016, four days *before* Respondent's brief in opposition was filed. If Respondent considered that a significant development, Respondent had the opportunity to inform the Court before it granted certiorari. *Cf.* S. Ct. R. 15.2 ("admonish[ing]" counsel of their "obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition").

Please do not hesitate to contact me if you need anything further.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Kyle Duncan", written over a white rectangular background.

S. Kyle Duncan
Counsel of record for Petitioner

cc: Josh Block
Counsel of record for Respondent