

Opinion of BREYER, J.

SUPREME COURT OF THE UNITED STATES

Nos. 05–1589 and 05–1657

GARY DAVENPORT, ET AL., PETITIONERS
05–1589 *v.*
WASHINGTON EDUCATION ASSOCIATION

WASHINGTON, PETITIONER
05–1657 *v.*
WASHINGTON EDUCATION ASSOCIATION

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF
WASHINGTON

[June 14, 2007]

JUSTICE BREYER, with whom THE CHIEF JUSTICE and JUSTICE ALITO join, concurring in part and concurring in the judgment.

I agree with the Court that the Supreme Court of Washington’s decision rested entirely on flawed interpretations of this Court’s agency-fee cases and our decision in *Boy Scouts of America v. Dale*, 530 U. S. 640 (2000). I therefore concur in the Court’s judgment, and I join Parts I and II–A and the second paragraph of n. 2 of the Court’s opinion. However, I do not join Part II–B, which addresses numerous arguments that respondent Washington Education Association raised for the first time in its briefs before this Court. See, e.g., *State ex rel. Washington State Public Disclosure Comm’n v. Washington Ed. Assn.*, 156 Wash. 2d 543, 565, n. 6, 130 P. 3d 352, 362, n. 6, (2006) (en banc) (noting that one of these arguments was neither raised nor addressed below). I would not address those arguments until the lower courts have been given the opportunity to address them. See, e.g., *National Collegiate Athletic Assn. v. Smith*, 525 U. S. 459, 469–470 (1999).