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SUPREME COURT  
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NO. 96365-7

IN THE SUPREME COURT OF WASHINGTON

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STATE OF WASHINGTON,

Respondent/Cross-Petitioner.

v.

PHILLIP SCOTT NUMRICH,

Petitioner/Cross-Respondent.

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PETITIONER'S REPLY TO ANSWER TO MOTION TO STRIKE  
AMICUS CURIAE BRIEF OF DEPARTMENT OF LABOR AND  
INDUSTRIES

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## **I. ARGUMENT IN REPLY**

### **A. L&I is not Afforded Deference**

The Department of Labor and Industries cites *PT Air Watchers v. State, Dep't of Ecology*, 179 Wn.2d 919, 925, 319 P.3d 23 (2014) for the proposition that the Court “defers to agency interpretations of a statute that it administers.” Answer to Motion to Strike Amicus Curiae Brief Department of Labor & Industries (“Answer”) at 1. *PT Air Watchers* is a very different case than Mr. Numrich’s case. In *PT Air Watchers*, this Court considered an appeal from an administrative adjudication of the Pollution Control Hearings Board (“Board”). *PT Air Watchers*, 179 Wn.2d at 923-25. This Court observed that:

The [Administrative Procedure Act] governs judicial review of the Board's decision. Under the APA, “The burden of demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a). “We accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but we are not bound by an agency's interpretation of a statute.”

*PT Air Watchers*, 179 Wn.2d at 925 (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998)).

In Mr. Numrich’s case, this Court is conducting a *de novo* review of a superior court decision. L&I had no adjudicatory role in the below proceedings. L&I should not be afforded any deference.

**B. L&I is a Law Enforcement Agency in this Case**

L&I argues: “L&I is not law enforcement and is separate from the prosecutor’s office...it is only when the prosecutor may direct the actions of law enforcement, that the law enforcement agency becomes an agent of the prosecutor.” Answer at 2. But in Mr. Numrich’s case, L&I’s actions demonstrate that it was law enforcement.

The State has acknowledged that, from the outset, it directed the L&I criminal investigation that led to the filing of charges:

the case was presented to the King County Prosecuting Attorney’s Office (KCPAO) as a potential criminal matter. KCPAO concluded that Numrich had potentially committed criminal violations of the law and WSDLI reopened its investigation.

CP 69 (State’s Response to Defendant’s Motions to Dismiss Count 1). After the criminal investigation was concluded, L&I, through Certified Safety and Health Officer Mark Joseph, authored the Certification for Determination of Probable Cause that formed the basis of the criminal charges filed by the State:

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

I, MARK JOSEPH, am a Certified Safety and Health Officer with the Washington State Department of Labor and Industries ("WSDLI") based out of Bellingham Washington. I am authorized under RCW 49.17 to conduct investigation of workplaces for safety violations, and may under section .070 of the same title and chapter require the attendance and testimony of witnesses and the production of evidence under oath. As such, I have reviewed investigation documents for WSDLI Inspection No. 317939264. I have also conducted an additional investigation in conjunction with the Washington State Office of the Attorney General.

Based upon my review and additional investigation, I declare that the following is true and correct:

VRP 5. The Certification outlined, over four and a half pages, the detailed investigatory efforts of L&I. VRP 5-9. Officer Joseph outlined numerous witness interviews he conducted, records he reviewed, and other analysis he completed as part of the investigation. These efforts unmistakably constituted "law enforcement." Officer Joseph signed the Certification for Determination of Probable Cause on behalf of the State:

Based on all of the above, there is probable cause to believe that Phillip Numrich committed the crime of Manslaughter in the Second Degree within King County in the State of Washington. There is also probable cause to believe that Phillip Numrich committed the crime of Violation of Labor Safety Regulation with Death Resulting within King County in the State of Washington in violation of RCW 49.17.190.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to the best of my knowledge. Signed and dated by me this 5<sup>th</sup> day of JANUARY 2018, at Bellingham, Washington.



Mark Joseph, Certified Safety Health Officer  
Washington State Department of Labor & Industries

VRP 9. This case was not investigated by the Seattle Police Department, the King County Sheriff's Office, or any other law enforcement agency. L&I was *the* law enforcement agency in this case.

L&I's attempt to frame its involvement as that of a "witness [who] gave information to the King County Prosecutor's Office" (Answer at 3) is directly contradicted by the record. L&I – through its enforcement personnel, including Officer Joseph – is the investigating agency in this case.

## II. CONCLUSION

L&I worked as an agent of the prosecutor, who is prosecuting this case on behalf of the State of Washington. Therefore, L&I is a party to this case and is not a proper amicus participant. *See* AMICUS CURIAE, Black's Law Dictionary (11th ed. 2019)(an amicus is "...[s]omeone who is *not* a party to the lawsuit...")(emphasis supplied).

Accordingly, Petitioner respectfully moves this Court to strike the amicus brief.

RESPECTFULLY SUBMITTED this 15th day of June, 2020.

ALLEN, HANSEN, MAYBROWN & OFFENBECHER, P.S.  
Attorneys for Petitioner/Cross-Respondent

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/s/ Todd Maybrown  
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**PROOF OF SERVICE**

Sarah Conger swears the following is true under penalty of perjury under the laws of the State of Washington:

On the 15<sup>th</sup> day of June, 2020, I filed the above Petitioner's Reply to Answer to Motion to Strike Amicus Curiae Brief of Department of Labor and Industries via the Appellate Court E-File Portal through which counsel listed below will be served:

Respondent's Counsel

Patrick Hinds, Senior DPA  
Eileen Alexander, DPA  
King County Prosecutor's Office  
King County Courthouse  
516 Third Avenue, W554  
Seattle, WA 98104

Amicus Curiae Counsel

Anastasia Sandstrom, AAG  
Elliott Furst, AAG  
WA State Attorney General's Office  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

And e-mailed to Petitioner Phillip Numrich.

DATED at Seattle, Washington this 15<sup>th</sup> day of June, 2020.

*Sarah Conger*  
Sarah Conger, Legal Assistant

**ALLEN, HANSEN, MAYBROWN, OFFENBECHER**

**June 15, 2020 - 4:00 PM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington v. Phillip Scott Numrich

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