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NO. 96365-7

**SUPREME COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent/Cross-Petitioner,

v.

PHILLIP SCOTT NUMRICH,

Petitioner/Cross-Respondent.

**ANSWER TO MOTION TO STRIKE
AMICUS CURIAE BRIEF
DEPARTMENT OF LABOR & INDUSTRIES**

ROBERT W. FERGUSON
Attorney General

Anastasia Sandstrom, WSBA No. 24163
Elliott Furst, WSBA No. 12026
Office Id. No. 91018
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-6993

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I. INTRODUCTION

Phillip Numrich has moved to strike the amicus brief of the Department of Labor & Industries (L&I). His theory is that the Department is not a friend of the Court but an agent of the prosecutor. Mot. Attachment 4. This argument has no merit. L&I is a separate agency from the King County Prosecutor, and it has a different and unique perspective on the issues involved in this case. The Court should deny the motion to strike.

II. ARGUMENT

A. L&I's Unique Expertise Will Aid the Court

L&I offers its expertise in work place safety to this Court. It has often provided amicus briefs to the Court in cases involving work place safety. *E.g., Vargas v. Inland Washington, LLC*, 194 Wn.2d 720, 452 P.3d 1205 (2019). Numrich argues that this Court should not grant any deference to L&I because the case does not involve construction of an administrative rule. Mot. Attachment at 10-11. But the Court also defers to agency interpretations of a statute that it administers. *PT Air Watchers v. Dep't of Ecology*, 179 Wn.2d 919, 925, 319 P.3d 23 (2014). And here the meaning of RCW 49.17.190, a statute involving work place safety, is at issue. Additionally, L&I offers its perspective on the importance of

criminal laws in deterring unsafe behavior. RCW 49.17.010, .040, .050.

All of this provides useful information for the Court.

B. L&I Is Not an Agent of the Prosecuting Attorney but a Separate Agency That May Offer Its Expertise as an Amicus

Numrich bases his objection to L&I's brief on the theory that the Department is not a friend of the Court but an agent of the prosecutor. Mot. Attachment 4. He relies on *State v. MacDonald*, 183 Wn.2d 1, 346 P.3d 748 (2015), for the theory that the Department's safety inspector was an "investigating officer" and so the Department was under the control of the prosecutor. Mot. Attachment 4-6.

But L&I is not law enforcement and is separate from the prosecutor's office. *See generally* RCW 43.22 (addressing creation and authority of L&I). L&I work place safety inspectors are not law enforcement officers. RCW 10.93.020, .070. As *McDonald* makes clear, it is only when the prosecutor may direct the actions of law enforcement, that the law enforcement agency becomes an agent of the prosecutor. *MacDonald*, 183 Wn.2d at 14. Not only is L&I not law enforcement, but the prosecutor has no control over the L&I investigator. RCW 43.22 is the chapter that establishes the Department of Labor & Industries. Nowhere in the chapter addressing L&I functions and authority does it suggest that L&I can be directed by a county prosecutor rather than its own director.

The fact that an L&I witness gave information to the King County Prosecutor's Office does not make the Department of Labor & Industries an agent of the prosecutor. Such a position would impose untenable and unintended requirements on a multitude of civil state agencies that provide information in criminal matters.

III. CONCLUSION

The Department of Labor & Industries has extensive experience in worker safety, which informed the analysis it provided to the Court as a friend of the Court. This Court should deny the motion to strike.

RESPECTFULLY SUBMITTED this 11th day of June, 2020.

ROBERT W. FERGUSON
Attorney General



Anastasia Sandstrom, WSBA No. 24163
Elliott Furst, WSBA No. 12026
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
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CERTIFICATE OF
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The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries' Answer to Motion to Strike Amicus Curiae Brief and this Certificate of Service in the below described manner:

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Susan L. Carlson
Supreme Court Clerk
Supreme Court of the State of Washington

E-Mail via Washington State Appellate Courts Portal:

Eileen Alexander: Eileen.Alexander@kingcounty.gov
Patrick Hinds: Patrick.Hinds@kingcounty.gov
King County Prosecutor's Office:
paoappellateunitmail@kingcounty.gov

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Todd Maybrown: todd@ahmlawyers.com
Cooper Offenbecher: cooper@ahmlawyers.com
Allen Hansen Maybrown & Offenbecher, P.S.

DATED this 11th day of June, 2020.

A handwritten signature in black ink, appearing to read "Shana Pacarro-Muller". The signature is written in a cursive style with a large initial 'S'.

SHANA PACARRO-MULLER
Legal Assistant
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-5808

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

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- patrick.hinds@kingcounty.gov
- sarah@ahmlawyers.com
- todd@ahmlawyers.com

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Answer to Motion to Strike Amicus Curiae Brief and Certificate of Service

Sender Name: Shana Pacarro-Muller - Email: shana.pacarromuller@atg.wa.gov

Filing on Behalf of: Anastasia R. Sandstrom - Email: anastasia.sandstrom@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

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