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No. 55256-2-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

KEVIN J. LOCKE AND TORI LOCKE,
husband and wife and the
marital community composed thereof,

Respondents,

v.

THE CITY OF SEATTLE,
a municipal corporation,

Appellants.

BRIEF OF *AMICUS CURIAE*
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

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After consultation
with the panel, the
motion is granted.



STATE OF WASHINGTON
SUPERIOR COURT
CLERK

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STATEMENT OF INTEREST

The IAFF is an unincorporated association and labor organization representing 270,000 fire fighters, EMTs and paramedics, and other emergency first responders (hereinafter “fire fighters”) in the United States and Canada, including approximately 7,640 in the State of Washington. The issues described below are of substantial concern to the IAFF’s members, as well as law enforcement officers, in the State of Washington who participate in the Law Enforcement Officers and Fire Fighters (LEOFF) Retirement System.

A decision adverse to the plaintiff on any of the issues addressed below would severely impact many fire fighters employed by municipalities in the State of Washington, including the many fire fighters represented by affiliates of the IAFF. It would also impact ongoing and future collective bargaining, as well as existing contracts among municipalities and IAFF affiliates. The issues themselves are of vital public interest because the LEOFF provisions challenged in this action serve a vital public purpose in promoting the fire fighters’ safety and ensuring financial support for fire fighters injured while on duty.

As the largest representative organization of first responders in the nation, the IAFF can offer its extensive knowledge of and practical experience in the occupation and the unique complexities and challenges

of providing emergency services to the public. The IAFF can thus provide authoritative analysis of value to this Court.

ARGUMENT

The defendant City of Seattle has argued in its appeal, among its multiple defenses, (1) that the plaintiff, as a trainee fire fighter, was not an “active” fire fighter and therefore not a “member” of LEOFF, (2) that § 41.26.281 does not waive the sovereign immunity of the City, and (3) that the provision is unconstitutional under the Washington State Constitution.¹

The IAFF respectfully submits that each of those three defenses must be rejected, and will address each individually.

A. Fire Fighters In Training Are Members Of LEOFF

Defendants argue that the plaintiff was not a “member” of LEOFF under RCW § 41.26.281 because the definition of a member, which in application to the plaintiff must rely on the statutory definition of “fire fighter,” does not include a *trainee* fire fighter. The defendants rely on two arguments. First, the definition of “fire fighter” under RCW § 41.26.030(4)(a) requires that the fire fighter “be actively employed as such.” Defendants contend that the plaintiff, as a trainee, was not “actively employed” as a fire fighter, and point to regulations concerning LEOFF membership to suggest that as a trainee he was not engaged in

¹ Because the remaining claimed defenses rely on particular facts in the case and thus would have no state-wide impact on fire fighters, the IAFF takes no position on them.

“fire protection activities.” Second, defendants argue that the definition under the Washington Administrative Code applies only to probationary or permanent employees, and that fire fighter trainees are neither.

Contrary to defendants’ contentions, the statutory and administrative definition of “fire fighter” clearly includes trainees.² First, both the statute and the Washington Administrative Code embrace a comparatively broad definition of “fire fighter” by referencing the *position of employment* (and the specific duties of that position) rather than (for example) training or skills requirements of the profession. See W.A.C. 415-104-225(2). The statutory definition states in pertinent part:

Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving *in a position which requires passing a civil service examination for fire fighter*, and who is actively employed as such....

RCW § 41.26.030(4)(a). Neither definition specifically references training requirements, such as those found in national standards of the National Fire Protection Association (NFPA), for becoming a “fire fighter” for purposes of professionally fighting a fire. (Indeed, the State of Washington has no regulatory requirements for fighting fires or engaging in fire suppression.) Instead, the definitions refer to a “uniformed fire

² As plaintiff showed through documents presented at trial, even the City of Seattle considered the plaintiff to be a LEOFF “member.” It is only after its own negligence caused severe injuries to the plaintiff that the City now claims otherwise.

fighter *position*” and a “*position* which requires passing a civil service examination.” W.A.C. 415-104-225(2); RCW § 41.26.030(4)(a). The statutory definition does not even require that the full-time “member of a fire department” have even yet *passed* the civil service examination. An individual is a “member” of LEOFF if he or she is simply employed full-time by a fire department and is “fully compensated” in that position, where the position is primarily “concerned with preventing, controlling and extinguishing fires.” A fire-fighter-in-training meets this common-sense definition.

From a reading of the plain language of both the statutory and regulatory definitions of “fire fighter,” one qualifies as a LEOFF member in a “uniformed fire fighter position” by showing that the “position” has the authority or responsibility to perform “fire protection activities.” But the phrase “fire protection activities” is itself defined so broadly that it does not exclude fire academy training. Indeed, it is absurd to claim, as the City apparently does, that training for fire suppression is not a “fire protection activity” that is “required for and directly concerned with preventing, controlling and extinguishing fires.”³ While it may be

³ Indeed, both probationary and permanent employees of fire departments, as required by national fire protection standards, engage in regular training and refresher courses throughout their employment with any fire department. Completion of the training is mandatory. Training time, whether engaged at the beginning of a career or at any other time, is obviously a “primary duty” of every professional fire fighter.

presumed that the “fire protection activities” requirement found in W.A.C. 415-104-225(2) is meant to exclude from the “fire fighter” definition those employed by the department in administrative or clerical positions, the same can’t be said for those employed as “fire fighters” who simply have not yet been assigned to operations. Indeed, the Supreme Court even suggested in dicta that “training to fight fires” was one of many possible “fire fighter duties.” Schrom v. Board for Volunteer Fire Fighters, 153 Wn.2d 19, 23, 100 P.3d 814, 816 (Wash. 2004) (holding that clerical employees of volunteer fire department do not qualify for pension benefits under volunteer fire fighters retirement system). In fact, under the proposed interpretation offered by defendants, a fire fighter on administrative leave, injury leave, suspension, or other non-active-duty status would also not qualify as a LEOFF member, including for many purposes other than RCW § 41.26.281. But such a reading flies in the face of the clear intent of the LEOFF system.

It is equally absurd to claim that an employee of a fire department who is hired into a position of fire fighter is not “actively employed as such” because he is attending fire academy training. Only if the definition specifically referred to “fully trained,” like “fully compensated,” fire fighters in the State of Washington would such an interpretation carry any weight. It may be judicially noticed by this Court that fire fighters,

whether in academy training at the beginning of their career, or at any other time throughout their service, regularly and frequently engage in training and re-training. During this time they are not actively fighting fires, but obviously are “actively employed as” a fire fighter.

Second, an application of defendants’ interpretation of the statute would also defy the legislative purposes of LEOFF. It would seem from a plain reading of the statutes that the public purposes of the LEOFF system are to assure fire fighters protection from, and compensation for, injury or death in the course of protecting the public in times of emergency. See RCW § 41.26.020.

“In resolving a question of statutory construction, the spirit and intent of the law should prevail over the letter of the law. Furthermore, if an act is subject to two interpretations, that which best advances the legislative purpose should be adopted.” In re R, 97 Wn.2d 182, 187, 641 P.2d 704, 707 (Wash. 1982). Here, the spirit and intent of the statutory LEOFF system is to provide retirement and other benefits, as well as protection from negligent acts of an employer, to individuals who chose the dangerous and challenging occupation of fire fighting. That purpose plainly extends to fire fighters in training academies.

It is axiomatic that fire fighters undertake a dangerous occupation every time they show up for work. An average of 94,500 fire fighters are

injured while on duty every year; between 100 to 130 die on-duty.⁴ But ten to twelve percent of those injuries and deaths typically occur in training or re-training exercises. Fire fighters and fire departments depend on regular and rigorous training and re-training so that personnel can respond quickly and efficiently in emergencies. Put simply, it is critical to the safety of the public and for the safety of fire fighters who respond to fire scenes that training simulate the dangerous conditions encountered at real emergencies. That critical necessity means that, unlike most private or public employees, fire fighters take substantial risks just engaging in training, and can suffer death, permanent disability, or injury. Indeed, those injuries which occur in early training may arguably have happened because a new fire fighter lacks the experience necessary to protect himself or herself. A finding that fire fighters in training are not subject to coverage under LEOFF would present a substantial disincentive to those considering becoming fire fighters. It also would fail to recognize the basic risks taken by fire fighters simply by showing up at the fire academy.

Moreover, LEOFF's protection against employer negligence promotes the proper and efficient operation of the fire department,

⁴ Statistics on fire fighter injuries and deaths, the causes of those injuries or deaths, are compiled annually by the National Fire Protection Association, which is not affiliated with the IAFF. See <http://www.nfpa.org>.

including during training. To effectively respond to an emergency, fire departments nationwide employ a quasi-military work environment in which each fire fighter – through a combination of standard operating guidelines, rigorous training, and discipline – immediately knows and executes his or her assigned duty, often with minimal direction from the officer in command at the fire scene. It is crucial at these times that fire fighters either respond to orders or carry out their assigned duties without hesitation; it is equally crucial that the lack of their hesitation not result in disaster. To ensure this unusually high degree of obedience in dangerous and stressful situations, trust must be developed between an employer and fire fighter, and that trust is best ensured where the fire fighter knows that the employer would be held accountable for negligent acts. This accountability is not only necessary at the fireground or emergency scene, but also in early training, when implementation of the quasi-military environment begins immediately. The purposes of LEOFF are ill-served if they are not extended to fire fighters in training.

Finally, the cases to which defendants cite do not support their assertions. For example, in Tucker v. Dept. of Retirement Systems, 127 Wn.App. 700, 113 P.3d 4 (Wash. App. 2005), a worker was briefly employed by a Fire Marshal – not a fire department – as a “fire fighter helper” in 1975. He left that job and did not become an actual fire fighter

until after 1977. As a result, the Department of Retirement Systems (DRS) placed him in LEOFF Plan II. Seeking to have his service transferred to Plan I based on his work before 1977, he argued that his stint with the Fire Marshal was sufficient to establish that he worked as a full-time fire fighter before 1977. The Court disagreed, but not for the reasons that the defendants state. The DRS had concluded that Tucker was not a fire fighter in 1975 because “he did not have a required employment relationship with a fire department...” 127 Wn.App. at 709. The Court agreed, noting that “Tucker cannot rebut the significance of his ... position being administrated by the Fire Marshal.” *Id.* at 712. Contrary to the defendants’ assertion, the circumstances found in Tucker do not apply to fire fighter trainees hired into full-time positions by an actual fire department.

Defendants also rely on Schrom v. Board for Volunteer Fire Fighters, supra, and IAFF Local 3266 v. Dept. of Retirement Systems, 97 Wn.App. 715, 987 P.2d 115 (1999), both cases in which employees were excluded from retirement system coverage because their primary duties were clerical only. But Schrom strongly supports a finding that fire fighter trainees are “fire fighters.” There, clerical employees of volunteer fire departments sought coverage under the Fire Fighters and Reserve Officers Relief and Pension Act, chapter 41.24 RCW. The Supreme Court

upheld the State administrative agency's rejection of the claimants' application for retirement benefits, finding that "neither [claimant's] duties include actively fighting fires *or training to fight fires.*" 153 Wn.2d at 22. (emphasis added). The Court also noted that

"fire fighters" need not hold the fire hose 24 hours a day, 7 days a week.... Limiting [pension coverage] merely to only those fire fighters who hold the fire hose would disregard the remainder of the statutory provision at issue. Under this view the volunteer fire fighter who is fortunate enough to never confront a raging inferno, *yet trains daily for such a contingency*, would be ineligible for pension benefits.... This construction would undoubtedly be absurd and therefore impermissible.

153 Wn.2d at 28 (emphasis added). We can see no reason why the Schrom Court's repeatedly expressed belief that individuals participating solely in fire training can be "fire fighters" for purposes of the volunteer pension system is not equally valid for the LEOFF system. Defendants do not themselves show otherwise.

Local 3266, cited by defendants, also in fact strongly supports a conclusion that trainees must be considered LEOFF "fire fighters." There, it was established by the DRS that airport technicians "perform a wide variety of tasks at the airport, including but not limited to ... fire fighting duties *and training*," and that only 40% of their work time was spent on fire fighter duties. 97 Wn.App. at 716-717. The Court of Appeals agreed with the DRS that the technicians were not fire fighters because they were

not employed as “full-time” fire fighters, but as full-time “airport operations and maintenance employees”: “The question we examine is whether full-time employees who perform fire fighting functions as only part of their many duties are full-time fire fighters.” 97 Wn.App. at 720. While the Court concluded that these employees were not “fire fighters” for purposes of LEOFF, it did not conclude that training was not a “fire fighting function.” Rather the opposite: the Court concluded that the technicians did not perform fire fighting functions – *including training* – often enough in their workday. Such a case is not apposite to a regular trainee fire fighter, employed by an actual fire department and completing fire academy training.

The defendants’ interpretation of § 41.26.030(4) flies in the face of the plain text of the provision, the purpose and intent behind the LEOFF system, and the holdings of courts. For these reasons, full-time fire fighter trainees must be considered “members” of LEOFF.

B. The City Is Not Entitled To Sovereign Immunity

The City argues that it is entitled to sovereign immunity because the State’s statutory waiver of immunity from suit for tortious conduct restricts the waiver to liability “to the same extent as if [a municipality] were a private person or corporation.” RCW § 4.96.010(1). This argument fails because the waiver of sovereign immunity is plain enough

from the language of the provision itself.⁵

RCW § 41.26.281 was enacted in 1971, originally as RCW § 41.26.280; at the same time, LEOFF members were removed from coverage of the State's workers' compensation statute, the Industrial Insurance Act. In 1977, the legislature restricted certain benefits to new LEOFF members hired after September 30, 1977, but made industrial insurance benefits available to them. The right to sue provision (still found at .280 rather than .281) remained available to all members of LEOFF, no matter their date of hire. See Fray v. Spokane County, 85 Wn.App. 150, 154-155, 931 P.2d 918, 920 (Wash.App. 1997). In 1992, the legislature, under the guise of making "technical corrections" and "recodifying" the LEOFF statutes, restricted the availability of RCW § 41.26.281 to those hired before September 20, 1977. Those individuals were known as LEOFF Plan I members. That restriction was annulled in Fray v. Spokane County, 134 Wn.2d 637, 952 P.2d 601 (Wash. 1998), with the Supreme Court finding that RCW § 41.26.281 applies to *both*

⁵ Even if RCW § 41.26.281 is not deemed sufficient to waive the City's sovereign immunity, the legislature's general waiver of sovereign immunity for municipalities nevertheless applies. RCW § 4.96.010(1). The defendants contend that, because the City is liable for industrial insurance benefits *and* for its negligent acts, it is made liable for tortious conduct to a greater extent than a private person or corporation. But there is nothing in the language of that provision to suggest that the "to the same extent" phrase suggests identical substantive standards of liability; indeed, a more appropriate reading of the provision would suggest that where a local governmental entity is found to have violated a duty to another under the relevant legal standard, then the entity is liable "to the same extent as if [it] were a private person or corporation."

Plan I and Plan II members. RCW § 41.26.281 has thus been on the books for almost 35 years, though courts – including the Supreme Court – have heard numerous challenges involving the statute for almost as long.

The language of RCW § 41.26.281 is plain: if a member is injured as a result of negligence of an employer,

the member *shall have* the privilege to benefit under this chapter *and also have* cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter.

RCW § 41.26.281 (emphasis added). “Employer” includes “any” municipality that employs a fire fighter or law enforcement officer. RCW § 41.26.030(2)(a). Chapter 41 also confers, among other “benefits,” coverage to “Plan II” members under the Industrial Insurance Act. See RCW § 41.26.480. Thus, under the plain language of the provision, members of LEOFF plan II – such as the plaintiff – are entitled to the benefit of workers’ compensation coverage *and* the right to sue their governmental employer for negligence.

Even elsewhere in Chapter 41, the legislature saw fit to clarify the scope of the waiver of sovereign immunity, stating in RCW § 41.26.270 that “all civil actions and civil causes of actions by such law enforcement officers and fire fighters against their governmental employers for personal injuries or sickness are hereby abolished, *except as otherwise*

provided in this chapter.” Such an explicit granting of a cause of action to LEOFF members clearly waives statutory immunity from a suit under the cause, or else the provision is useless.

The City appears to admit that RCW § 41.26.281 itself waives municipal sovereign immunity by peremptorily asserting that such a reading of the statute is precluded by Washington Const. Art. II, sec. 19., which requires that "no bill shall embrace more than one subject, and that shall be expressed in the title." Defendants suggest that if RCW § 41.26.281 were found to waive sovereign immunity – as, by the provision’s plain text, it does – it would contain two subjects, one of them not in the title. Yet defendants point to no case supporting a contention that the title of the original bill fails to apprise a reader of its contents. In fact, courts have regularly found similar titles to be constitutional.

“The title to a bill need not be an index to its contents; nor is the title expected to give the details contained in the bill.” Treffry v. Taylor, 408 P.2d 269 (Wash. 1965). Indeed, any “objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.” Washington Assoc. of Neighborhood Stores v. Washington, 70 P.3d 920 (Wash. 2003) (quoting Nat'l Ass'n of Creditors v. Brown, 264 P. 1005 (1928)). As the Court of Appeals stated in Fray, “[t]he question is whether a reader of this title would be led to an

inquiry into the body of the act, or the title would indicate the scope and purpose of the law.” Fray, 931 P.2d at 922; see also YMCA v. State of Washington, 62 Wn.2d 504, 383 P.2d 497 (Wash. 1963) (stating that “a title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law”). In Fray, the Court of Appeals found a violation of Art. II, sec. 19 in the 1992 amendment to the LEOFF provisions because the title of the bill “suggests that the changes are technical corrections,” when in fact the act made substantive changes to the LEOFF system. The violation did not rest on a lack of clarity or detail, but rather on the fact that the title of the 1992 amendment could easily have deceived a reader such that he or she would not inquire further into its contents. See Fray, 931 P.2d at 922 (cited approvingly in the Supreme Court’s opinion, Fray v. Spokane County, 952 P.2d at 652).

In contrast to the Court’s finding on the 1992 amendments, courts have consistently found no violation of Art. II, sec. 19 where a bill’s title would not deceive a reasonable reader. See, e.g., State Finance Comm. v. O’Brien, 105 Wn.2d 78, 711 P.2d 993 (Wash. 1986) (finding constitutional legislation enacted by a bill entitled “an act relating to capital projects”). In fact, where, as here, the legislature has chosen a general title, that title will be granted a liberal construction: “So long as

the title embraces a general subject, it is not violative of the constitution even though the general subject contains several incidental subjects or subdivisions.” State v. Grisby, 97 Wn.2d 493, 498, 647 P.2d 6 (Wash. 1982) (quoting Kueckelhan v. Federal Old Line Ins. Co., 69 Wn.2d 392, 403, 418 P.2d 443 (Wash. 1966)). For example, there is no particular obstacle raised by the fact that repeal of a statute may be a subject of the legislation without indication in the title that repealer is involved. See, e.g., Maxwell v. Lancaster, 81 Wash. 602, 607, 143 P. 157 (Wash. 1914).

In the instant case, the general title, liberally construed, indicates the scope and purpose of the legislation and gives notice that would lead to an inquiry into the body of the act. This includes an interpretation of the statute as waiving sovereign immunity of municipal employers with respect to law enforcement officers and fire fighters.

Defendants’ argument in this instance reaches a plainly absurd result. Obviously, the legislature drafted and enacted a provision which gave rise to liability for the negligence of municipal employers of fire fighters and law enforcement officers. Parsing of the text, as defendants do, in order to nullify the provision in its entirety violates the basic principles of statutory interpretation. Put simply, if the defendants’ sovereign immunity argument were to be granted any weight, the provision would have no meaning at all. But “it is a fundamental principle

of statutory construction that courts must not construe statutes so as to nullify, void or render meaningless or superfluous any section or words of same.” Taylor v. City of Redmond, 89 Wn.2d 315, 319, 571 P.2d 1388, 1390 (Wash. 1977). Defendants point to dicta in Taylor to suggest that RCW § 41.26.281 does not independently waive the City’s sovereign immunity, but the contention lacks credence because Taylor expressly concluded that courts have jurisdiction to hear suits in negligence against municipalities. See 89 Wn.2d at 320. Indeed, even if Taylor might be charitably read to hold that RCW § 41.26.281 does not itself provide an action under common law, it nevertheless still clearly and unmistakably waives the City’s sovereign immunity.

For the foregoing reasons, the IAFF respectfully submits that defendants’ contention that neither provision waives its sovereign immunity must be denied.

C. RCW § 41.26.281 Is Constitutional

Defendants assert that the statute on which the plaintiff’s claim primarily rests is unconstitutional under the privileges and immunities clause of the Washington Constitution because it requires municipalities to be subject to workers’ compensation laws without immunity from tort liability. The argument is that private employers as a class enjoy immunity from suit for negligence while public employers of law

enforcement officers and fire fighters, as a class, do not. However, the defendants fail to meet the proper threshold for invalidation of a statute under the State Constitution's privileges and immunities clause. Proper constitutional analysis will show that RCW § 41.26.281 easily survives the low level of scrutiny required. First, no "privilege or immunity" is impacted by statutory provision, nor a fundamental right or suspect class. Second, the classification created by RCW § 41.26.281 is rationally related to a governmental purpose.

We note that statutes are presumed to be of constitutional validity, see State ex rel. Smilanich v. McCollum, 62 Wn.2d 602, 606, 384 P.2d 358, 361 (Wash. 1963), and "[i]n no doubtful case should the courts pronounce legislation to be contrary to the constitution, and all doubts should be resolved in favor of constitutionality." Review of a provision under the State's privileges and immunities clause, Wash. Const. Art. I, § 12, is "substantially similar to" but still independent of the equal protection clause of the U.S. Constitution, amend. XIV, § 1. Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 805, 83 P.3d 419, 425 (Wash. 2004) (citing cases). The degree of distinction between Art. I, § 12 and the federal equal protection clause, however, remains unaddressed. Art. I, § 12 states in full:

No law shall be passed granting to any citizen, class of

citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Washington Courts have generally embraced a reading of this provision as analogous, despite the highly differentiated text, to the equal protection clause. See, e.g., Seeley v. State, 132 Wn.2d 776, 788 940 P.2d 604, 610 (Wash. 1997) (citing cases). Under a general equal protection analysis, where a challenge to a provision does not implicate a suspect class or fundamental right, as those terms are defined in established case law, a court shall apply “minimal scrutiny.” Yakima County Sherrifs’ Association v. Yakima County, 92 Wn.2d 831, 835 601 P.2d 936, 938 (Wash. 1979). Under such scrutiny, a court employs three steps:

First, does the classification apply alike to all members within the designated class?

Second, does some basis in reality exist for reasonably distinguishing between those within and without the designated class?

Third, does the challenged classification have any rational relation to the purposes of the challenged statute? More specifically, does the difference in treatment between those within and without the designated class serve the purposes intended by the legislation?

Id. This minimal scrutiny would appear to be called for because defendants do not argue that a fundamental right is implicated, or that private employees, private employers, or LEOFF members are a suspect class. Indeed, we can find no case which suggests otherwise. Rather,

defendants appear to call for this “minimal scrutiny” or “arbitrariness” analysis. See Defendants’ Memorandum of Law, at 19 (arguing that “the Legislature *arbitrarily* chose to require fire fighters’ employers to pay workers’ compensation...”).

Minimal scrutiny is also called for in this case because no “privilege or immunity,” as that term is used in Art I, § 12, is implicated. As the Supreme Court recently re-emphasized, “not every statute authorizing a particular class to do or obtain something involves a ‘privilege’ subject to article I, section 12.” Grant County, 150 Wn.2d at 813 (holding that the “statutory authorization to landowners to commence annexation proceedings by petition” is not a “privilege or immunity” under Art. I, § 12; quoting State v. Vance, 29 Wash. 435, 458, 70 P. 34 (1902)).⁶ The power to bring suit for negligence against an employer – or, conversely, the right to evade such a suit – is not a “privilege or

⁶ Indeed, the terms “privileges and immunities” has been drawn extremely narrowly, and

pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship. These terms, as they are used in the constitution of the United States, secure in each state to the citizens of all states the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from. By analogy these words as used in the state constitution should receive a like definition and interpretation as that applied to them when interpreting the federal constitution.

Grant County, 150 Wn.2d at 813.

immunity” under Art. I, § 12. Indeed, courts have applied minimal scrutiny in Art. I, § 12 challenges where liability for flood control activities was precluded for counties but not municipalities, Paulson v. Pierce County, 99 Wn.2d 645, 664 P.2d 1202 (Wash. 1983), or where the right to seek adjustment to workers’ compensation claims was limited by a statute of limitations, Campos v. Dept. of Labor and Industries, 75 Wn.2d 379, 880 P.2d 543 (Wash. 1994).

In applying the three steps of “minimal scrutiny” to RCW § 41.26.281, the provision clearly is applied alike to all members of the designated class: in this case, the provision applies to all members of the LEOFF system. See Fray, supra. Moreover, “some basis in reality” exists to distinguish the designated class, in that the class is distinguished by the definition established for “member” under the LEOFF system. See RCW § 41.26.030. As for application of the third step, in which the challenged classification must have a rational relation to the purposes of the challenged statute, it should be remembered that

[t]he challenger must do more than merely question the wisdom and expediency of the statute. The challenger must show conclusively that the classification is contrary to the legislation's purposes. Moreover, it must be remembered that equal protection does not require a state to attack every aspect of a problem. Rather, the legislature is free to approach a problem piecemeal and learn from experience.

Yakima County Sherrifs’ Association, 92 Wn.2d at 835.

It may be presumed that the legislature of this State has recognized that the occupations of fire fighter or law enforcement officer have a higher risk of occupational hazards, and are overall more physically demanding than other occupations. In both occupations, governmental employees are called upon to employ a wide range of skills and training in difficult and often deadly circumstances. Police and fire departments rely on a quasi-military environment that emphasizes the absolute necessity of following, unquestioningly, direct orders, standard operating procedures, and the chain of command; in such an environment, no employee is ordinarily permitted by the department to refuse an order or depart from procedure – even if following such an order or procedure might lead to injury or death. Both departments are “first responders” to emergencies, when employees must act quickly and efficiently, without the kind of debate among co-workers that ordinarily is found in other workplaces. A quick and efficient response requires unquestioning compliance by fire fighters; to put it bluntly, if an order might result in an injury or death, in most cases the wisdom of the order is sorted out later.

Maintaining this quasi-military environment becomes difficult where front-line fire fighters believe that their employer may escape accountability for negligently placing them unnecessarily at higher risk for injury or death, including during necessarily risky training exercises. In

such circumstances, a fire fighter's only way to protect himself or herself is to quit (or find a job in another state), but such an option only contributes to continuing shortages of qualified personnel, wastes money spent on training and equipment, and may even end that fire fighter's career. It thus may be presumed that the legislature believed that RCW § 41.26.281 ensures that the obedience fire and police departments demand of their employees rests on trust that those departments will not negligently make orders or standard operating procedures that endanger them. Indeed, this Division of the Court of Appeals has recognized that very principle in concluding that workers' compensation benefits may set off the damages collected under RCW § 41.26.281. See Hansen v. City of Everett, 93 Wn.App. 921, 926, 971 P.2d 111 (Wash. 1999). The Court also noted that the employer benefited from the LEOFF system in "three respects."

First, the employer's liability for medical services is subject to a statutory offset.... Secondly, the statute expressly provides that the employer be subrogated to all rights of the member against third parties to recover payments made by the employer for medical services. Thirdly, the "claim" against the employer in a lawsuit based on negligent or intentional harm is limited to amounts in "excess of damages over the amount received or receivable under [LEOFF]." The offset is applied regardless of the nature or type of disability benefits under LEOFF.

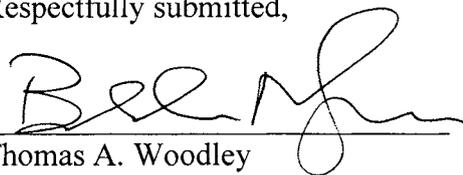
Hansen, 93 Wn.App. at 926-927 (citations omitted).

Thus, not only does RCW § 41.26.281 serve a vital governmental purpose, a municipality receives additional benefits not available to private employers as a trade-off for being subject to suits in negligence. The provision protects fire fighters and law enforcement officers because the risky nature of those occupations, and encourages discipline and efficiency in the workplace. These bases are more than “rational” under “minimal scrutiny” analysis. For these reasons, the defendants’ challenge to the constitutionality of the provision should be rejected.

CONCLUSION

An adverse finding on any of the defendants’ jurisdictional defenses would severely impact fire fighters throughout the State. Thus, while the IAFF takes no position on the plaintiff’s case overall, it respectfully submits that the defendants’ claims as discussed above must be rejected as without merit.

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