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**SUPREME COURT
OF THE STATE OF WASHINGTON**

Supreme Court No. 80309-9

STATE OF WASHINGTON,
EMPLOYMENT SECURITY DEPARTMENT,

Petitioner,

v.

KUSUM L. BATEY,

Respondent.

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MEMORANDUM OF AMICUS CURIAE THE UNEMPLOYMENT
LAW PROJECT OPPOSING THE PETITION FOR REVIEW

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Amicus curiae Unemployment Law Project (ULP) endorses each of the arguments raised in Kusum Batey's response opposing the Department's Petition for Review (PFR). In addition, ULP will address the Department's farcical claim that the Court of Appeals improperly concluded that the phrase "enhance benefit and tax equity" in the title of EHB 3278 "fails to inform a hypothetical class of interested employees that the Legislature had decided to address the good cause criteria." PFR, p. 17

In its Petition for Review, the Employment Security Department ("Department") challenges the Court of Appeals ruling as a "unique and intrusive review of EHB 3278." PFR, p. 10. The Department's claim ignores decades of jurisprudence in this arena. This Court has long interpreted article II, § 19's requirement that "the subject of the bill be expressed in its title" to mean that a title must give notice "to the general public and, *most especially*, to parties whose rights and liabilities are affected by the bill." *Patrice v. Murphy*, 136 Wn.2d 845, 854, 966 P.2d 1271, 1275 (1998)(italics added)("AN ACT Relating to court costs...", which included provisions requiring law enforcement officers to provide ASL interpreters to hearing impaired witnesses, but which failed to "mention anything about the inclusion of provisions relating to qualified ASL interpreters, legal proceedings, police investigations or arrests,"

violated constitutional subject in the title requirements); *see also Potter v. Whatcom County*, 138 Wash. 571, 245 Pac. 11 (1926)(“An Act relating to townships and amending §§ 11369, 11375 ...,” which contains no reference to counties, their liabilities or duties, yet placing the responsibility of bridges costing in excess of three hundred dollars on the county, violated article II, § 19’s subject-in-the-title requirement); *cf. Petroleum Lease Properties Co. v. Huse*, 195 Wash. 254, 80 P.2d 774 (1938)(“AN ACT providing for the regulation and supervision of the issuance of securities...,” but which defined the word “security” in the body of the text contrary to the ordinary meaning of a “security,” violated subject in the title requirement of State constitution).

The provisions of EHB 3278, as enacted, primarily affect the rights of employees who voluntarily quit their job and then apply for unemployment insurance (UI) benefits. This class of employees is not “hypothetical,” as the Department argues, but rather is the primary class of people affected by the provisions of EHB 3278. As such, the Court of Appeals’ concern that “[e]mployees – a group particularly affected by EHB 3278 – would not reasonably be expected to recognize this phrase as a signal that legislators had decided to change the good cause criteria for voluntary quits,” was neither intrusive nor unique, but rather an essential

aspect of any article II, § 19 “subject- in-the-title” analysis. *Batey v. Employment Security Dep’t*, 137 Wn. App. 506, 513, 154 P.3d 266, 270.

The majority of employees, or rather former employees that ULP has represented in its over twenty year history, are low-income workers in such varied industries as food service, retail sales, manufacturing, janitorial services, hospitality/hotel services, and agriculture. Many are in unskilled jobs; some are limited-English proficient; some have limited literacy skills. As these individuals weigh the risks and benefits of a period of unemployment, they must usually do so without the benefit of legal counsel,¹ because of ULP’s limited staff.² Therefore, any amendments to the provisions of the Employment Security Act (ESA), that may affect the rights of these workers to receive unemployment benefits, must be drafted as to alert the average (potential and actual) UI recipient that their rights to obtain UI benefits have changed.

Concerning this class of potential UI recipients, the Department’s claims that the Court of Appeals read too much into the “rhetorical” phrase “to enhance benefit and tax equity” and that “article II, section 19

¹ A study commissioned by the Washington State Task Force on Civil Equal Justice and the Washington Supreme Court, concluded, “Low-income people face more than 85 percent of their legal problems without help from an attorney Most legal problems experienced by low-income people affect basic human needs ...” *The Washington State Civil Legal Needs Study* (September 2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

² ULP has only 2.5 FTE staff attorneys in its Seattle office and a .5 FTE staff attorney in a Spokane satellite office. Motion of the Unemployment Law Project For Leave to File Amicus Curiae Memorandum, p. 1.

has never barred the use of persuasive rhetoric in the political arena of legislation,” ring hollow. PFR, p. 8. First, the Department cites no authority in support of this argument. However, more significantly, the Department’s implication that the legislature has the discretion to use “persuasive rhetoric” when assigning a title to a bill, simply belies subject-in-title jurisprudence. Contrary to the Department’s claims, this Court has consistently reiterated that the article II, § 19 requirement that the subject of the bill appear in its title means that the title must give notice to those “most especially” affected by the bill.” *Patrick v. Murphy*, 136 Wn.2d at 855, 966 P.2d at 1275. Where, as here, the title of a bill does not alert the average worker that the legislature has restricted the good cause criteria for voluntary quits, “[a] court should ‘not strain to interpret [a] statute as constitutional: a plain reading must make the interpretation reasonable.’” *Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000)(striking down initiative 1-695 as unconstitutional because the term “‘tax’ does not mean ‘tax’ as the term is commonly understood”).

Moreover, the Department’s arguments side step any discussion of the commonly understood meaning of the terms “enhance benefit,” which appear in the title. The dictionary definition of “enhance” is “[t]o increase or make greater, as in value, beauty, or reputation; augment.” *The American Heritage Dictionary* 454 (2nd ed. 1982). “Benefit” is defined as

“[s]omething that promotes or enhances well-being; advantage.” *Id.* at 171; *cf.* Response to Petition for Review, pp. 9-12 (“Benefit equity” implies that like categories of individuals should be treated alike in determining eligibility for benefits”). As such, the average worker would reasonably understand the terms “enhance benefit” to mean an increase in his or her UI benefits. However, the provisions of EHB 3278 do not increase, make greater, or enhance the well-being of a worker that voluntarily quits her job, it does quite the opposite. Therefore, the Court of Appeals correctly determined that the title of EHB 3278, which promises to “enhance benefits,” did not properly alert the individuals primarily affected by the provisions of the bill that the legislature was not increasing their potential benefits, but rather restricting the situations where a worker could receive UI benefits if he or she voluntarily quit a job.

The Department and the supporting briefs from the State Legislature and the Association of Washington Business ultimately ask this Court to accept review and reverse the Court of Appeals based on claims that the Legislature was well-meaning and believed it was operating within what *it* understood as the law governing titling a piece of legislation. These arguments also have been addressed and rejected by the courts: “While we believe that no improper motive prompted the method

followed in the enactment of the legislation here challenged, and that the objective sought to be accomplished was within legislative competence, nevertheless the constitutional principle involved is too important to be ignored.” *Petroleum Lease Properties Co. v. Huse*, 195 Wash. at 261; *see also Gruen v. State Tax Commission*, 35 Wn.2d 1, 211 P.2d 651 (1949)(“the body of the act must be confined to the particular portion of the subject which is expressed in the limited title. The courts cannot enlarge the scope of the title....The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been more comprehensive, if, in fact, the legislature has not seen fit to make it so.”)³

In conclusion, the Court of Appeals’ decision in *Batey* is based on well settled article II, § 19 jurisprudence, which has remained relatively consistent for almost a century. *See Potter v. Whatcom County*, 138 Wash. 571, 245 Pac. 11 (1926). There is nothing unique or intrusive about the Court of Appeals’ analysis in *Batey*. Despite almost a century of decisions from the courts guiding the state legislature on the subject in the

³ The Department ultimately corrected the constitutional defects that plagued 2ESB 6097 – the first effort to amend the voluntary quit provisions of the Employment Security Act, RCW 50.20.050 – and EHB 3278 – the legislature’s second effort. Indeed, in its motion for reconsideration, the Department obtain the Petitioner’s agreement to petition the Court of Appeals to clarify that ESSB 6885 – the legislature’s third effort at amending the voluntary quit provisions – was constitutional. *Batey*, 137 Wn. App. at 506, fn. 4, 154 P.3d at 270, fn. 4. Therefore, it is somewhat disingenuous for the Department and the State legislature to claim that there is confusion over how future bills should be titled. *See Amicus Curiae Memorandum of Washington State Legislature*, p. 6.

title requirements of article II, § 19 of the Washington Constitution, many legislative and private efforts to change the laws of the State continue to run afoul of the article II, § 19 requirements. Indeed, in *Potter v. Whatcom County*, the court remarked, “the constitutional provision (art. II, § 19, state constitution) seems clearly to have been disregarded, and under our prior holdings we have no choice but to hold the title of the amendatory act insufficient ...” 138 Wash at 576, 245 Pac. at 13. Following well-settled article II, § 19 subject-in-title jurisprudence, the Court of Appeals came to the same conclusion in *Batey*.

Therefore, for the foregoing reasons, amicus curiae ULP joins respondent Kusum Batey in opposing the Department’s Petition for Review.

DATED this 10th day of November, 2007.

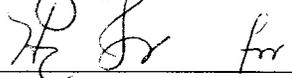
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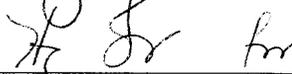
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