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SUPREME COURT NO. 80309-9

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SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, EMPLOYMENT SECURITY  
DEPARTMENT,

Petitioner,

v.

KUSUM L. BATEY,

Respondent.

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AMICUS CURIAE MEMORANDUM OF THE  
WASHINGTON STATE LEGISLATURE IN SUPPORT OF  
PETITION FOR REVIEW

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MICHAEL C. HOOVER  
Senate Counsel  
WSBA No. 23327  
MARTIN LOVINGER  
Senate Counsel  
WSBA No. 11890  
Office of Senate Counsel  
Washington State Senate  
401 Legislative Building  
P.O. Box 40482  
Olympia, WA 98504-0482  
Telephone: (360) 786-7532  
Facsimile: (360) 786-7520

TIMOTHY G. SEKERAK  
House Counsel  
WSBA No. 23202  
Office of House Counsel  
Washington State House of  
Representatives  
431 Legislative Building  
P.O. Box 40600  
Olympia, WA 98504-0600  
Telephone: (360) 786-7767  
Facsimile: (360) 786-7036

Attorneys for Amicus Curiae  
The Washington State Legislature

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## **I. IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington State Legislature (the "Legislature") is the constitutionally created legislative branch of the government of the State of Washington. Wash. Const. art. II, § 1. From time to time, the Legislature takes positions on issues before this Court when necessary to represent the collective interests of the institution of the Legislature and its members.

The Legislature submits this memorandum in support of the positions taken by the Employment Security Department and the State of Washington (the "state"), and to further urge this Court to take up review of the case to set forth consistent and workable standards with respect to the titling of legislation. Although not a direct party to this case, the Legislature is uniquely affected by its resolution as the branch of government charged with titling legislation, and having clear legal standards on this matter is therefore of paramount interest to it and its elected members.

## **II. COURT OF APPEALS DECISION**

The Legislature urges review of a decision by the Court of Appeals, Division One, in *Kusum L. Batey v. State of Washington, Employment Security Department*, Cause No. 57513-9-1. The original

decision was filed on March 12, 2007, and then modified on May 16, 2007, following a motion for reconsideration. The appellate court's opinion is reported at *Batey v. Employment Sec. Dep't*, 137 Wn. App. 506, 154 P.3d 266 (2007).

### **III. ISSUE PRESENTED**

Does the Court of Appeals decision conflict with established Supreme Court precedent on titles for legislation and present a significant question of constitutional law or substantial public interest such that the Supreme Court should accept review?

### **IV. STATEMENT OF THE CASE**

The state has set forth the facts and procedural disposition of the case in the Petition for Review filed on June 15, 2007. The case involves two bills passed by the Legislature: 2003's Second Engrossed Senate Bill 6097 ("2ESB 6097"), and 2006's Engrossed House Bill 3278 ("EHB 3278"). Both measures relate to the state's unemployment compensation system, including provisions disqualifying some employees who left work voluntarily without good cause from receiving unemployment benefits under certain circumstances for specific periods of time. Appendix to Petition for Review at 12-62; 63-68.

The underlying case was brought by Ms. Batey against the Department to adjudicate her claims with respect to unemployment benefits, and wound its way through various administrative and trial court proceedings before being heard by the Court of Appeals in 2007. The Court of Appeals issued rulings on March 12 and May 16, 2007. These rulings are included with the state's Petition for Review in its Appendix at 1-11. It is these collective decisions of the Court of Appeals on bill title requirements which are of interest to the Legislature, not the specific adjudication of Ms. Batey's claims for unemployment compensation benefits.

The Court of Appeals rulings were primarily limited to issues presented under article II, section 19 of the Washington Constitution—specifically, and of interest to the Legislature, whether or not the bills enacting the substantive law on which the case turns were properly titled. Ultimately, the appellate court held that both measures violated the legislative title requirements of the Washington Constitution. Slip Opinion at 1, 9. It is this holding on the title requirements for 2006's EHB 3278, along with the analysis set forth by the Court of Appeals, which the Legislature urges this Court to review.

## V. ARGUMENT

The Legislature believes that the Court of Appeals rulings with respect to the title requirements for legislation found in the Washington Constitution are erroneous, conflict with established Supreme Court precedent, and present significant issues of constitutional law that should be reviewed by this Court.

### **A. The Supreme Court Should Accept Review Because The Court Of Appeals Decision Conflicts With Established Supreme Court Precedent.**

The Legislature believes that the Court of Appeals decisions are erroneous and will fully brief this position in an amicus brief should this Court grant review. At the very least, the appellate decisions are at odds with or seem to confuse other Supreme Court precedent. For example, absent from the lower court's ruling is any discussion of the enrolled bill doctrine, which has long been a standard used by this Court to guide inquiry into the Legislature's choice of title. *E.g.*, *State Grange v. Locke*, 153 Wn.2d 475, 105 P.3d 9 (2005) (enrolled bill doctrine used to limit Court's inquiry into actual effect of titles and amendatory language in a bill). The enrolled bill doctrine has its roots in constitutional separation of powers, and entitles the Legislature to great deference—as a coordinate branch of government—with respect to process in enacting legislation.

*CLEAN v. State*, 130 Wn.2d 782, 814, 928 P.2d 1054 (1996). The appellate court’s failure to consider the enrolled bill doctrine in making its title analysis is both erroneous and a departure from past precedent.

Similarly, another long-standing precept laid down by this Court is that “Section 19 analysis is limited to the title and body of the act.” *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003). In this particular case, however, it appears that the appellate court went beyond the specific titles and measures at issue, and looked instead at secondary documents to try and make some determination as to context or legislative history. Slip Opinion at 8. While such a review may be useful in determining legislative intent as to the substantive law, it is unclear that it should form part of a title analysis.

The lower court is also dismissive of the Legislature’s statutory citation set forth in the title. Established precedent is clear that statutory references in a title must fit within the general or specific subject matter set forth in the title. *See Fray v. Spokane County*, 134 Wn.2d 637, 654-55, 952 P.2d 601 (1998) (mere reference to a code section in the title of an act does not, in itself, state a subject). Nonetheless, it seems strange that the appellate court could find that a title containing a specific reference to a statute at issue is insufficient to put anyone following the bill on notice as to the fact that this section was being changed. Slip Opinion at 8. It is

likewise a departure from established precedent that the appellate court applied some sort of title analysis to matters *removed* from the bill. Slip Opinion at 7-8.

At the very least, the way in which the appellate court employs various analyses muddies the waters with respect to appropriate constitutional analysis and makes it very difficult for the Legislature and the public to draft titles for legislation which meet all these varied standards. A simple review of the different ways in which both the petitioner and the respondent characterize the decision of the appellate court in their respective briefs to this Court illustrate the confusion left in the wake of this case. These differences go well beyond the usual adversarial posturing which is properly a part of any legal dispute. Rather, they show the very real practical and legal challenges presented to the Legislature and the public in trying to conform legislative titles to uncertain legal standards, and a final disposition of these varied analyses from this Court is warranted to provide clarity.

**B. The Supreme Court Should Accept Review Because The Case Presents Significant Questions Of Law Under The Constitution Of The State Of Washington.**

Respondent argues that there is no need for this Court to grant review because there is no significant question of constitutional law presented. Response to Petition for Review at 13. The Legislature respectfully disagrees. This case presents significant matters of constitutional law, such as separation of powers questions as to the proper limits of court inquiry into the legislative branch's exercise of its constitutional powers, as well as the subject-in-title requirements of article II, section 19 of the Washington Constitution which are at the very heart of this case.

The implications of the lower court's holding with respect to bill title requirements are not a matter of only esoteric or academic interest, nor do they have only limited application. Instead, the ramifications of the decision on legislative titles have a very real and practical impact upon the way the Legislature carries out its primary constitutional functions. As early as December of this year, elected members of the Legislature will begin prefiling proposed bills for the upcoming 2008 legislation session, which will begin on January 14, 2008. Wash. Const. art. II, § 12; RCW 44.04.010. As the branch of government which originates legislation, the Legislature has a compelling interest in assuring that a consistent and workable body of legal precedent underpins the constitutional

requirements for bill titles. Likewise, it can be expected that members of the public, who are entitled to propose legislative changes through initiatives and other ballot measures, also require a clear standard for legislative titles.

Whether this Court adopts the lower court's holding, re-affirms past precedent, or even sets forth a new analysis, the Legislature's primary goal in this appeal is to ensure that it and its members have a clear understanding of this area of the law, and such an understanding requires that this Court grant review and act as the final arbiter as to the appropriate legal standard for bill titles.

## VI. CONCLUSION

The Legislature respectfully urges this Court to grant the state's Petition for Review filed on June 15, 2007.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of July, 2007.

OFFICE OF SENATE COUNSEL  
OFFICE OF HOUSE COUNSEL

By 

MICHAEL C. HOOVER  
Senate Counsel  
WSBA No. 23327  
MARTIN LOVINGER  
Senate Counsel  
WSBA No. 11890

TIMOTHY G. SEKERAK  
House Counsel  
WSBA No. 23202

Attorneys for Amicus Curiae  
The Washington State Legislature