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No. 57513-9-1

80309-9

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

KUSUM L. BATEY, Appellant

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

REPLY BRIEF OF APPELLANT



Deborah Maranville, WSBA #6228
Attorney for Appellant

University of Washington
Unemployment Law Clinic
William H. Gates Hall
P. O. Box 85110
Seattle, WA 98145-1110
Ph: (206) 543-3434
Fx: (206) 685-2388

Brief of Appellant

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I. INTRODUCTION

Kusum Batey asks this court to reverse the decision of the Employment Security Department (“agency”) denying her claim for unemployment compensation benefits. She does so on the grounds that the decision below was based on a provision in Laws of 2003, 2^d Spec. Sess., ch. 4 §2 [hereinafter cited “2ESB 6097, the *2003 Amendments*” for ease of cross-referencing to both Appellant’s Brief and Respondent’s Brief] amending RCW 50.20.050, the statute governing eligibility for benefits when an individual voluntarily leaves work, that was enacted in violation of the subject-in-title provision of article II, section 19 of the Washington State Constitution. She further asks this court to remand for a decision under the voluntary quit statute that existed prior to 2ESB 6097, the *2003 Amendments*, and award her a reasonable attorney’s fee under RCW 50.32.160.

The agency ducks the question whether 2ESB 6097, the *2003 Amendments* to RCW 50.20.050, violated the subject-in-title requirement. Respondent’s Brief (Respt.’s Br. 12-13). Instead, the agency contends that Laws of 2006, ch. 12, § 2 [hereinafter EHB 3278, the *2006 Amendments*], cured the earlier violation. First, the agency argues that EHB 3278, the *2006 Amendments*, provided adequate notice of the contents of the bill. Respt.’s Br. 5-8. Second, the agency contends

that in any event EHB 3278, the *2006 Amendments*, has a title that is general, and thus entitled to liberal construction. Respt.'s Br. 8-9.

Finally, the agency argues that it was constitutionally permissible for the legislature to cure the subject-in-title defect in 2ESB 6097, the *2003 Amendments*, retroactively by enacting EHB 3278, the *2006 Amendments*.

The agency's argument rests on three mistaken views of the law applicable to this case. In addition, the agency fails to attend to the history of EHB 3278, the *2006 Amendments*, and also alternatively ignores and misunderstands the key phrase in the title.

First, in claiming that the title is general and provides adequate notice, the agency misunderstands what the relevant portion of the title is that must be considered in evaluating the subject-in-title claim. Second, in arguing that the Washington courts have abandoned the distinction between general and specific titles under which general, but not specific, titles are entitled to liberal construction, the agency misreads the relevant case law. Third, while the legislature could indeed constitutionally enact curative legislation retroactively, the legislature has not properly done so. The agency misreads the relevant case law and ignores the history of the legislation in arguing to the contrary. Finally, the agency's arguments ignore the common understanding of the terms "benefit equity" and "tax equity."

II. ARGUMENT

THE LEGISLATURE FAILED TO CURE THE CONSTITUTIONAL INFIRMITY AFFECTING 2ESB 6097, THE 2003 AMENDMENTS, BY ENACTING EHB 3278, THE 2006 AMENDMENTS

Not surprisingly, the agency does not contest that 2ESB 6097, the 2003 Amendments to the benefits requirements of the unemployment compensation statute, violates the subject-in-title provision of article II, section 19 of the Washington State Constitution. See Respt.'s Br. 16-18 and Respt.'s Br. 4-5. Nonetheless, the agency asks this court to affirm the decision below on the ground that the 2006 Amendments to RCW 50.20.050 found in EHB 3278 cure the prior defect. Respt.'s Br. 5-17. That invitation should be rejected because the agency misunderstands the basis for subject-in-title analysis and misapplies it to the facts of this case.

A. For Subject-in-Title Analysis the Courts Distinguish General and Restrictive Titles, and Consider Only the Narrative Portion of the Title Preceding the First Semicolon

In her opening brief, Ms. Batey argued that the relevant title for subject-in-title analysis is the narrative portion of the title preceding the first semicolon, Brief of Appellant (Br. of Appellant) 11, and that a restrictive bill title is not entitled to liberal construction. Br. of Appellant 13. In its brief, the agency does not correctly identify the portion of the

title that must be considered for purposes of subject-in-title analysis.

Respt.'s Br. 9, 10. In addition, the agency erroneously contends that the Washington courts have abandoned the distinction between general and specific titles. Respt.'s Br. 6-7.

1. To Determine Compliance With the Subject-in-Title Requirement, the Relevant Title is the Narrative Portion of the Title Preceding the First Semicolon and Does Not Include References to Code Numbers

As set out on page 11 of Ms. Batey's opening brief, Washington cases provide that the relevant portion of a bill title is the narrative portion preceding the first semicolon. *State v. Thomas*, 103 Wn. App. 800, 808, 14 P.3d 854 (2000). The agency cites no cases to the contrary and does not expressly dispute this point. Its references to the relevant title, however, are at times inconsistent with this analysis and with Ms. Batey's related claim, based on *Fray v. Spokane County*, 134 Wn.2d 637, 654-55, 952 P.2d 601 (1998) and *Sorenson v. Kittitas Reclamation Dist.*, 70 Wash. 528, 531, 127 P. 102 (1912), that numerical references to statutes set out after the first semicolon are not sufficient to state a title.

On page 9 of its brief, the agency asserts that "EHB 3278's title, 'making adjustments in the unemployment insurance system' is broad and generic," but the agency does not include in its quotation the critical infinitive phrase "to enhance benefit and tax equity" that follows the

cited portion of the title. As discussed in subsection B below, that infinitive phrase creates a restrictive title that is misleading.

On page 10 of its brief, the agency implicitly claims that the relevant title includes code numbers *after* the first semicolon, so that inclusion of the phrase “reenacting RCW 50.20.050” *after* the first semicolon in the title to EHB 3278, the *2006 Amendments*, satisfies subject-in-title requirements. The agency apparently views RCW 1.08.050 and its predecessors as implicitly overruling the 1912 case *Sorenson*.

The current version of RCW 1.08.050 provides that “[t]he legislature in amending or repealing laws shall include in such act references to the code numbers of the law affected.” This provision, a section in the chapter titled Statute Law Committee (Code Reviser), does not claim to override the Washington Supreme Court’s interpretation of the state’s constitution, has never been cited by the courts in connection with subject-in-title analysis, and appears to be merely a sensible technical provision designed to assist in keeping the official code up-to-date. Moreover, the claim that the relevant title includes code numbers was specifically rejected in 1902 in *State ex rel. Seattle Electric Co. v. Superior Court*, 28 Wash. 317, 68 P. 657 (1902), and again, well after

the enactment of RCW 1.08.050, in *Patrice v. Murphy*, 136 Wn.2d 845, 853, 966 P.2d 1271 (1998) and *Fray*, 134 Wn.2d at 654-655.

2. *The Courts Distinguish General and Restrictive Titles for the Purpose of Subject-in-Title Analysis*

The agency responds to Ms. Batey's claim that EHB 3278, the 2006 Amendments, contains a restrictive title that is not entitled to liberal construction by arguing that in recent cases the Washington Supreme Court has distinguished between general and restrictive titles only for purposes of single-subject analysis under article II, section 19, and not for analysis under the subject-in-title requirement. Respt.'s Br. 6-7. The agency cites *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003) and *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d. 762 (2000) in support of that claim. Respt.'s Br. 7.

Because the two constitutional requirements are closely related and many cases raise both challenges, the court does sometimes explain the distinction and its significance in addressing the single subject claim without returning to it in discussing the subject-in-title requirement. See, e.g. *Pierce County v. State*, 150 Wn.2d 422, 431, note 3, 436-437, 78 P.3d 640 (2003); *Amalgamated Transit Union Local 587*, 142 Wn.2d at

206-217, 217-227. *See also* Appendix A, entries marked with a single asterisk in the third or fourth column.

Other recent Supreme Court cases, however, do refer to titles as either general or specific for subject-in-title analysis, and, in fact, one of the cases cited by the agency closes its discussion of article II, section 19 with the following sentence: “Accordingly, whether general or restrictive, the title of I-713 does not violate the single subject rule or the subject in title rule of article II, section 19.” *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 640. *See also* *Washington State Grange v. Locke*, 153 Wn.2d 475, 497, 105 P.3d 9 (2005).

Recent Court of Appeals decisions also follow the general-versus-specific title distinction for subject-in-title analysis. *Locke v. City of Seattle*, __ Wn. App __, 137 P.3d 52 (2006); *State v. Thomas*, 103 Wn. App. 800, 14 P.3d 854 (2000). In this regard, these recent decisions are consistent with a long line of cases dating back at least to 1896. *See, e.g.*, *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956); *Gruen v. State Tax Comm’n*, 35 Wn.2d 1, 211 P.2d 651 (1949); *Percival v. Cowychee & Wide Hollow Irrigation Dist.*, 15 Wash. 480, 46 P. 1035 (1896). *See* Appendix A for a thorough listing of the cases. Thus, the agency is incorrect in claiming that the general-versus-specific-title analysis is inapplicable to this case. The agency’s attempt to undermine Ms.

Batey's claim that a restrictive title is not entitled to liberal construction therefore fails.

As set out below in subsection B, Ms. Batey contends that the title to EHB 3278, the *2006 Amendments*, is restrictive under the applicable case law. Whether categorized as general or restrictive, however, as set out in subsection C below, the title violated article II, section 19 because it failed to provide adequate notice of the contents of the bill and was misleading given the bill's history.

B. The Relevant Portion of the Title of EHB 3278, the 2006 Amendments, is Restrictive, Not General, and Therefore is Not Entitled to Liberal Construction

The Washington case law distinguishing general and restrictive titles is extensive. As shown by the summaries in the case chart attached as Appendix A, a subject-in-title challenge always involves the question whether the bill or initiative's title is sufficient to encompass particular provisions within the bill. Thus, the descriptor general or specific is a relative term: is the title general or specific with respect to the contents of the bill? As a result, assignment to the category general or specific can seem inconsistent if the reader does not take time to consider the underlying claim.

In the bulk of cases, however, a general title has only a few words with no limiting phrases. *See, e.g., Washington State Grange*, 153

Wn.2d at 475 (Title “[an] ACT Relating to a qualifying primary” is general and encompasses provisions for Montana style primary); *Locke v. City of Seattle*, WL 1669603 (Wn. App. 2006) (Title “[a]n Act Relating to Law Enforcement Officers and Fire Fighters” is general and encompasses the right of law enforcement officers and fire fighters to sue municipal employers notwithstanding governmental employers’ sovereign immunity); *In re Metcalf*, 92 Wn. App. 165, 963 P.2d 911 (1998) (Title “[a]n Act relating to violence prevention” is general and encompasses provisions on deductions from inmate earnings for costs of incarceration and crime victims’ compensation fund); *Charron v. Miyahara*, 90 Wn. App. 324, 330-335, 950 P.2d 532 (1998) (Title “[a]n Act relating to the uniform disciplinary act” is general and encompasses a shift in disciplinary authority from the Board to the Secretary).

By contrast, a specific title is typically longer, with limiting phrases or adjectives that do not encompass a subject included in the act.¹ *See, e.g., Cory v. Nethery*, 19 Wn.2d 326, 329-31, 142 P.2d 488 (1943) (Title “[an] ACT relating to local improvements in cities and towns, and repealing certain acts and parts of acts” is restrictive and does not cover provision repealing statute of limitations concerning special

¹ Petitioner’s opening brief contained a garbled sentence on this point with an inapt citation, as noted in footnote 1 in Respondent’s Brief, for which she apologizes. The sentence and citation should have been deleted from the brief.

drainage districts); *Nat'l Ass'n of Creditors v. Brown*, 147 Wash. 1, 264 P. 1005 (1928) (Title “[an] Act relating to the venue of civil actions in justice courts” is specific and insufficient to encompass jurisdiction of justice courts); *Charron*, 90 Wn. App. 335-337 (Title “[a]n Act relating to the use of examinations in the credentialing of health professionals” is restrictive and does not encompass provisions that reallocated authority from the Board to the Secretary); *Daviscourt v. Peistrup*, 40 Wash. App. 433, 437, 698 P.2d 1093(1985) (Title “[a]n Act Relating to the acquisition of property by public agencies” is restrictive, so act could not be interpreted as encompassing condemnation actions brought by private individuals).

The narrative portion of the title preceding the first semicolon in EHB 3278, the *2006 Amendments*, is “[a]n ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity.” Because the title includes the infinitive phrase “to enhance benefit and tax equity” it is restrictive as it limits the type of adjustments that could be contained in the act to those directed at a certain purpose, enhancing benefit and tax equity.

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**C. The Restrictive Title of EHB 3278, the 2006 Amendments,
Does Not Give Fair Notice of the Contents of the Act**

In her opening brief, Ms. Batey pointed out that, as enacted, EHB 3278, the *2006 Amendments*, has *no* provisions relating to taxes and does not address either benefit or tax *equity*. Br. of Appellant 23. Thus, the subject of the bill is not contained in the restrictive title, and the title fails to give notice of its contents. In addition, she argued that failure to include reference to the retroactivity provision in the title of the bill is misleading given the history of the bill. Br. of Appellant 23-24. The agency's response that the legislature could conclude that "the possibility of returning to the eligibility requirements for unemployment benefits that existed before 2003 would be inequitable," Respt.'s Br. 11, ignores both the common meaning of "benefit equity" and "tax equity" and the history of the bill.

1. Retroactive Reenactment of UI Benefit Eligibility Provisions Does Not Further "Benefit and Tax Equity" as that Term is Commonly Understood

In determining whether a title satisfies the subject-in-title requirement, the courts look to the ordinary meaning of the language used in the title. *Washington State Grange*, 153 Wn.2d at 479-480, 495, 497. The agency seems to view the phrase "benefit and tax equity" as a throwaway phrase with no serious content. The agency overlooks the

fact that both “benefit equity” and “tax equity” have well-established meanings in public policy debates.

“Benefit equity” implies that like categories of individuals should be treated alike in determining eligibility for benefits. Thus, a recent report to the Texas legislature listed “benefit equity” as one of several goals of the workers’ compensation program, defining the term as follows: “BENEFIT EQUITY. The system should provide similar benefits to claimants in similar circumstances and it should provide benefits that are reasonably proportionate to the severity of the injury.” Joint Select Comm. on Workers' Comp. Ins., A Report to the 71st Texas Legislature 6-7 (Dec. 9, 1988), cited in Phil Hardberger, *Texas Workers' Compensation: A Ten-Year Survey--Strengths, Weaknesses, and Recommendations*, 32 St. Mary's L.J. 1 (2000).

Another recent analysis noted that in the context of disability benefits the term benefit equity has two aspects: “We begin our discussion of the equitable criterion by distinguishing between horizontal equity and vertical equity. Horizontal equity requires that workers who are equivalent should be treated equally. . . . Vertical equity, in a narrow sense, requires that workers with differing losses of income should receive benefits proportional to their losses.” Robert T. Reville, et al.,

AN EVALUATION OF CALIFORNIA'S PERMANENT DISABILITY RATING SYSTEM, Inst. Civ. Just. (Rand, 2005) (Available on Westlaw).

The phrase “benefit equity” surfaces in debates over a wide variety of public benefits. The consistent usage of the term concerns situations in which one group of individuals is arguably being unfairly excluded from benefits available to another group of individuals. *See, e.g.*, Shara L. Alpern, Comments, *Solving Work/Family Conflict by Engaging Employers: A Legislative Approach*, 78 Temp. L. Rev. 429, 451 (2005) and Jonathan P. Hiatt, *Policy Issues Concerning the Contingent Work Force*, 52 Wash. & Lee L. Rev. 739, 745 (1995) (part-time workers); Gregory Care, Comments, *Something Old, Something New, Something Borrowed, Something Long Overdue: The Evolution of a “Sexual Orientation-Blind” Legal System In Maryland and the Recognition of Same-Sex Marriage*, 35 U. Balt. L. Rev. 73, 90 (2005) and Domestic Partnerships Raise New Questions About Benefits Equity, Pen. Rep. (BNA) Vol. 20, No. 46, at 2478 (Nov. 22, 1993) (domestic partnerships); Enid Trucios-Haynes, *The Rhetoric of Reform: Non-citizen Workers in the United States*, 29 S. Ill. U. L.J. 43, fn. 24 (2004-2005) (benefit equity for non-citizen workers in various temporary worker categories); C. Keanin Loomis, Note, *A Battle Over Birth “Control”:* *Legal and Legislative Employer Prescription Contraception Benefit*

Mandates, 11 Wm. & Mary Bill Rts. J. 463, 483 (2002) (drug benefit equity for coverage of contraception); Bonnie C. Kittinger, Note, *Should Married Couples Share Social Security Earnings Credit?*, 26 J. Fam. L. 601, text at fn. 122 (1987/1988) (pension benefit equity); Commuter Benefits Equity Act of 2001, S. 217, 107th Cong. (2001) (bill to ensure users of public transportation received employer benefits equal to automobile users); U.S. Gen. Acc. Off., *Social Security: Issues Involving Benefit Equity for Working Women 15-21* (GAO/HEHS-96-55 Apr. 1996) (working women). The 2003 changes to the eligibility criteria for unemployment benefits were not directed at “benefit equity” as that term is commonly understood; they did not address unfair inclusion or exclusion of certain categories of workers from eligibility for unemployment benefits. Thus, retroactive reenactment of those changes in 2006 cannot plausibly be considered to “enhance benefit . . . equity.”

Likewise, “tax equity” is a core concept in arguments over tax policy. It is explained in introductory casebooks on tax law, *see, e.g.*, Laurie Malman, et al., *THE INDIVIDUAL TAX BASE: CASES, PROBLEMS AND POLICIES IN FEDERAL TAXATION* 14-15 (West 2002) and “tax equity” along with its synonym “tax fairness” is the subject of lengthy law review articles. *See, e.g.*, Richard J. Wood, *Supreme Court Jurisprudence of Tax Fairness*, 36 Seton Hall L. Rev. 421 (2006). The

term “tax equity” is not simply a synonym for “tax rates” as the employer’s argument would imply.

2. *The Significance of the Phrase “To Enhance Benefit and Tax Equity” in the Title of EHB 3278, the 2006 Amendments, Must Be Evaluated in Light of the Bill’s History*

The agency contends that the infinitive phrase “to enhance benefit and tax equity” is “best seen as merely an expression by the legislature of its goal in reenacting RCW 50.20.050.” Respt.’s Br. 11. In addition to ignoring the common meaning of the phrase “benefit and tax equity” this argument ignores the history of the bill and the last minute substitution of the contents of the bill as enacted for provisions establishing a legislative tax force to study subjects unquestionably encompassed by the term benefit and tax equity. *See* Br. of Appellant 21-22; *see also Patrice*, 136 Wn.2d at 855 (holding statute in violation of subject-in-title provision based in part on last minute incorporation of one bill into another); Norman J. Singer, SUTHERLAND STATUTORY CONSTRUCTION §18.2, p. 50 (6th ed. 2002) (Constitutional subject-in-title provisions “prevent[s] the surreptitious passage of laws containing provisions incongruous with the subject proclaimed in the title”).

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3. *Any Connection between a Provision Retroactively Reenacting Changes in Eligibility Requirements and the Subject of "Benefit and Tax Equity" is Too Attenuated to Satisfy Subject-in-Title Requirements*

The agency argues that “[c]hanges in eligibility requirements for unemployment benefits certainly affect benefits paid to employees and can thereby affect the tax premiums paid by employers.” Respt.’s Br. 11. Unemployment compensation taxes are based on the employer’s “experience rating” which in turn is based on the amount of unemployment compensation paid to a given employer’s former workers. *See* RCW Ch. 50.29. Thus, there is eventually a connection between eligibility requirements and taxes. The smallest action in the world may have large effects in other areas. *See, e.g.*, the “butterfly effect” in chaos theory, http://en.wikipedia.org/wiki/Butterfly_effect. But the law restricts responsibility for causation through such concepts as ‘proximate cause.’ *See* Dan F. Dobbs, *THE LAW OF TORTS* 443 (2000). Such a remote connection must be considered too attenuated to satisfy the constitutional subject-in-title requirement.

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4. *The Failure to Include Reference to the Retroactivity Provision in the Title to EHB 3278 the 2006 Amendments, Violates the Subject-in-Title Requirement Where the Title is Restrictive and is Misleading in Light of the Bill's History*

Finally, the agency contends that the legislature can constitutionally cure a subject-in-title defect by reenacting the defective legislation, that the retroactive legislation is otherwise constitutional if it does not impair “settled expectations,” and that the legislature has cured the defect in 2ESB 6097, the *2003 Amendments*, by enacting EHB 3278, the *2006 Amendments*. Ms. Batey does not contest that the legislature *could have* cured the defective title in 2ESB 6097, the *2003 Amendments*, by properly reenacting its provisions and including in the title of the bill a reference to the retroactivity clause, nor that retroactive legislation can be constitutional. The legislature did not properly make the legislation retroactive, however. The legislature’s failure to include reference to the retroactivity provision in the title to EHB 3278, the *2006 Amendments*, violates the subject-in-title requirement given the bill’s contents and its history.

The agency contends that *In re Estate of Button*, 190 Wash. 333, 67 P.2d 876 (1937) is controlling concerning the legislature’s failure to include a reference to the bill’s retroactivity provision in the title. In holding that a title “[a]n Act relating to revenue and taxation * * *

providing for the levy and collection of a tax on inheritances” was sufficient to encompass taxation of gifts in contemplation of death, however, the court in *In Re Estate of Button* classified the title as “general and comprehensive.” *Id.* at 344. *In re Estate of Button* is not controlling here because the title for EHB 3278, the *2006 Amendments*, is a restrictive one, as set out in subsection B above.

In addition, in an earlier case when the Washington Supreme Court addressed the need to refer to a retroactivity provision in the bill’s title, the court invalidated the statute in question, stating that adherence to the subject-in-title requirements is especially important “when the enactment is of a retroactive character which is not ordinarily anticipated. . . .” *State v. King County*, 49 Wash. 619, 623, 96 P. 156 (1908).

In this case, in the same legislative session that enacted EHB 3278, the *2006 Amendments*, the legislature separately reenacted 2ESB 6097, the *2003 Amendments*, in ESSB 6885, Laws of 2006, ch. 13, slightly modifying the voluntary quit provision. As a result, the only practical function of EHB 3278, the *2006 Amendments*, as enacted, was to make the reenactment of the voluntary quit provision retroactive. This is precisely the type of circumstance in which the public and

individual legislators are likely to be misled if the retroactivity provision is not included in the bill's title.

III. CONCLUSION

In 2003 the legislature enacted 2ESB 6097, the *2003 Amendments*, in a bill titled “[an] Act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.” That bill violated article II, section 19 of the Washington State Constitution, the subject-in-title provision, to the extent that it included provisions altering eligibility criteria for unemployment compensation.

In 2006, the legislature enacted EHB 3278, the *2006 Amendments*, making “adjustments in the employment insurance system to enhance benefit and tax equity.” But, at the last minute, for its original provisions that concerned a legislative tax force to study benefit and tax equity, that bill substituted a reenactment of the 2003 amendments to RCW 50.20.050 and a retroactivity provision. Those amendments, purportedly retroactive to claims such as Ms. Batey's, also violate article II, section 19 of the Washington State Constitution, because the bill's restrictive title was misleading given the history of the bill and did not give proper notice of the bill's contents.

For the foregoing reasons, Kusum Batey respectfully requests that this case be reversed and remanded for a discretionary determination of good cause under the voluntary quit eligibility statute existing prior to the enactment of 2ESB 6097, the *2003 Amendments*, and that she be awarded a reasonable attorney's fee in accordance with RCW 50.32.160.

Dated: July 29, 2006


Deborah Maranville
WSBA # 6228
Attorney for Appellant

Appendix A Washington Cases Distinguishing General and Specific Titles to Legislation

This chart compiles the Washington appellate cases that discuss the distinction between general and restrictive titles and address a subject-in-title challenge. The chart shows whether a title was considered general or restrictive and whether the court considered the title to encompass the challenged provisions in the act. See notes at end of chart for references to related cases that were not included.

Case/Citation	Title	Gen'l	Restrictive	Result & What Title Does (Not) Cover
<i>Locke v. City of Seattle</i> , ___ Wn. App. ___, 137 P.3d 52, 57 (2006)	An Act Relating to Law Enforcement Officers and Fire Fighters.	√		Upheld. Title embraced a general subject, encompassing the right of law enforcement officers and fire fighters to sue municipal employers despite governmental employers' sovereign immunity.
<i>Washington State Grange v. Locke</i> , 153 Wn.2d 475, 491-499, 105 P.3d 9 (2005)	AN ACT Relating to a qualifying primary. [Legis. adopted bill responding to 9 th Cir. decision invalidating blanket primary system. Gov. vetoed part 1 re: top two primary system, leaving part 2 re: Montana primary system]	√		Upheld. Common and ordinary meaning of the title's language encompassed the act's allowance of Montana style primary because it was germane to the bill title and would lead a reader to inquire into the body of the act to learn about the proposed primary system.
<i>State v. Lanphar</i> , 124 Wn. App. 669, 672-675, 102 P.3d 864 (2004)	AN ACT Relating to escaping from custody; amending RCW 9A.76.110, 9A.76.120, 9A.76.170, 9A.76.010, and 9.94A.360; adding a new section to chapter 10.88 RCW; creating a new section; repealing RCW 72.65.070 and 72.66.060; prescribing penalties; providing an effective date; and declaring an emergency.	√		Upheld. "'Escaping From Custody' broadly identifies what crimes comprise an escape from custody. As such it is general." At 674, 867. Bail jumping is a form of escape and Lanphar was still in custody when he posted bond under the definition of custody in Washington State.
<i>Pierce County v. State</i> , 150 Wn.2d 422, 436-437, 78 P.3d 640 (2003)	Ballot title: Initiative Measure No. 776 concerns state and local government charges on motor vehicles. This measure would require license tab fees to be \$30 per year for motor vehicles, including light trucks. Certain local-option vehicle excise taxes and fees used for roads and transit would be repealed. Should this measure be enacted into law?	√*		Upheld. Title encompassed the limitation of state and government license tab fees on cars and light trucks to \$30. The ballot title was sufficiently detailed to prompt an inquiring mind to read the rest of the initiative for further details.

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<p><i>State v. McReynolds</i>, 117 Wn. App. 309, 340-342, 71 P.3d 663 (2003).</p>	<p>AN ACT Relating to increasing penalties for armed crimes</p>	<p>√*</p>	<p>Upheld. Title encompassed the criminalization of constructive possession of firearm because term “armed crime” in title logically encompassed constructive possession of firearm.</p>
<p><i>Citizens for Responsible Wildlife Mgmt. v. State</i>, 149 Wn.2d 622, 639-640, 71 P.3d 644 (2003)</p>	<p>Shall it be a gross misdemeanor to capture an animal with certain body-gripping traps, or to poison an animal with sodium fluoroacetate or sodium cyanide?</p>	<p>√*</p>	<p>Upheld. Initiative title encompassed ban on raw fur trade of animal pelts obtained with body-gripping traps and the two pesticides. Even if title restrictive, still no violation.</p>
<p><i>Washington Ass'n of Neighborhood Stores v. State</i>, 149 Wn.2d 359, 371-372, 70 P.3d 920 (2003)</p>	<p>Initiative Measure No. 773 concerns additional tobacco taxes for low-income health programs and other programs. This measure would impose an additional sales tax on cigarettes and a surtax on wholesaled tobacco products. The proceeds would be earmarked for existing programs and expanded health care services for low-income persons.</p>	<p>√</p>	<p>Upheld. Ballot title gave voting public proper notice of initiative's purpose, such as new taxes that will go into effect if measure passes.</p>
<p><i>Amalgamated Transit Union Local 587 v. State</i>, 142 Wn.2d 183, 217-227, 11 P.3d 762 (2000)</p>	<p>Shall voter approval be required for any tax increase, license tab fees be \$30 per year for motor vehicles, and existing vehicle taxes be repealed?</p>	<p>√</p>	<p>Struck down. Title did not encompass section requiring voter approval for any tax increase while defining tax to include specific fees for commercial or proprietary products or services rendered or benefits received, fees, assessments other than taxes, and utility charges by PUDs, all charges most would not consider “traditional taxes.”</p>
<p><i>State v. Cloud</i>, 95 Wn. App. 606, 617-618, 976 P.2d 649 (1999)</p>	<p>“Shall criminals who are convicted of ‘most serious offenses’ on three occasions be sentenced to life in prison without parole?” (Ballot Title of Initiative 593)</p>	<p>√</p>	<p>Struck down. Title did not encompass subjects unrelated to persistent offenders, such as early release prohibitions for first-time offenders, because the initiative was restrictive.</p>
<p><i>In re Metcalf</i>, 92 Wn. App. 165, 183-184, 963 P.2d 911 (1998)</p>	<p>AN ACT relating to violence prevention.</p>	<p>√</p>	<p>Upheld. Title sufficient to encompass provisions re: deductions from inmate pay for incarceration costs, crime victims' compensation fund, savings.</p>

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<p><i>Charron v. Miyahara</i>, 90 Wn. App. 324, 329-337, 950 P.2d 532 (1998)</p>	<p>SB 5308 titled “AN ACT relating to the use of examinations in the credentialing of health professionals; amending . . .” and SB 5365 titled “AN ACT relating to the uniform disciplinary act; amending . . .”</p>	<p>√ SB 5365</p>	<p>√ SB 5308</p>	<p>Parts of SB 5308 struck down. Title of SB 5308 is restrictive and parts that reallocated authority from the Board to the Secretary are not fairly within the title’s subject. Title of SB 5365 is general and upheld. Title of SB 5365 provides notice that the bill addresses discipline of health care professionals and a shift in disciplinary authority from the Board to the Secretary is germane to the uniform disciplinary act.</p>
<p><i>State v. Broadway</i>, 133 Wn.2d 118, 123-129, 942 P.2d 363 (1997)</p>	<p>“An Act Relating to increasing penalties for armed crimes . . .” (legislative title of Initiative 159) (legislative title counts as the official title rather than the ballot title when the legislature enacts the legislation)</p>	<p>√</p>	<p>√</p>	<p>Upheld. Title encompassed the firearm enhancement provision because it fell within the purview of the restrictive title. The fact that other provisions may have violated article II, section 19 of the Constitution did not render the whole Act unconstitutional as those parts were severable.</p>
<p><i>Washington Fed’n of State Employees v. State</i>, 127 Wn.2d 544, 551-557, 901 P.2d 1028 (1995)</p>	<p>“Shall campaign contributions be limited; public funding of state and local campaigns be prohibited; and campaign related activities be restricted?” (Ballot title of Initiative 134)</p>	<p>√</p>	<p>√</p>	<p>Upheld. Rational nexus exists between ballot title and section 26, which repealed one method of making political contributions (allowing state employees to have voluntary payroll deductions contributed to registered political committees).</p>
<p><i>Daviscourt v. Peistrup</i>, 40 Wn. App. 433, 437-440, 698 P.2d 1093 (1985)</p>	<p>An Act Relating to the acquisition of property by public agencies.</p>	<p>√</p>	<p>√</p>	<p>Upheld. Title sufficient to cover provision for award of attorney’s fees in public condemnation actions only but not sufficient in condemnation actions brought by private individuals by “expressly limiting the act’s scope to the acquisition of property by public agencies” p. 439</p>
<p><i>Washington Educ. Ass’n v. State</i>, 97 Wn.2d 899, 906-07, 652 P.2d 1347 (1982)</p>	<p>An Act Relating to Community Colleges. [Petitioners alleged title was too general]</p>	<p>√</p>	<p>√</p>	<p>Upheld. Title sufficient to cover restrictions on tenure and due process rights because act concerned matters relevant to what its title expressed; that being matters relevant to community colleges.</p>

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<p><i>State ex rel. Jones v. Charboneau's</i>, 27 Wn. App. 5, 9-11, 615 P.2d 1321 (1980), review denied 94 Wn.2d 1021 (1980)</p>	<p>“Shall places where obscene films are publicly and regularly shown or obscene publications a principal stock in trade be prohibited?” (Ballot Title of Initiative 335)</p>	<p>√</p>	<p>Struck down. Ballot title did not encompass places of prostitution, illegal gambling, fighting, and opium smoking because the title did not provide the public with notice that they also were also voting on these subjects.</p>
<p><i>State v. Canyon Lumber Corp.</i>, 46 Wn.2d 701, 706-707, 284 P.2d 316 (1955)</p>	<p>“An Act relative to the liability of persons responsible for slash in forested area; and amending section 76.04.370, R.C.W.”</p>	<p>√</p>	<p>Upheld. Title encompassed abatement of slashing, cost, and cost of fire fighting as result of existence of slash hazard.</p>
<p><i>Gruen v. State Tax Comm'n</i>, 35 Wn.2d 1, 8-23, 211 P.2d 651 (1949)</p>	<p>An Act providing for the payment of a bond issue repayable from the excise taxes on cigarettes as herein provided for; making an appropriation and providing penalties.</p>	<p>√</p>	<p>Upheld. Title was general and embraced a general singular subject, encompassing section allowing State to initiate excise taxes on cigarettes to fund a bond to pay for a bonus for World War II veterans.</p>
<p><i>State ex rel. Toll Bridge Auth. v. Yelle</i>, 32 Wn.2d 13, 23-28, 200 P.2d 467 (1948)</p>	<p>An Act relating to toll bridges; relating to the powers and duties of the Washington Toll Bridge Authority and certain officers; authorizing the purchase and operation of toll bridges, highway and ferry connections and approaches thereto;</p>	<p>√**</p>	<p>Struck down. Title insufficient to cover subject of financing ferries because title would not put someone on notice as to an enlargement of the powers of the Washington toll bridge authority beyond what it previously possessed under the 1937 act.</p>
<p><i>Cory v. Nethery</i>, 19 Wn.2d 326, 330-31, 142 P.2d 488 (1943)</p>	<p>AN ACT relating to local improvements in cities and towns, and repealing certain acts and parts of acts.</p>	<p>√</p>	<p>Struck down. Title not sufficient to encompass provision repealing statute of limitations concerning special drainage districts.</p>
<p><i>DeCano v. State</i>, 7 Wn.2d 613, 623-631, 110 P.2d 627 (1941)</p>	<p>“AN ACT relating to the rights and disabilities of aliens with respect to land, and amending chapter 50, Laws of 1921, . . .”</p>	<p>√**</p>	<p>Struck down. Title misleading and deceptive because it provided no indication that statute amended definition of word, “alien,” to include native Filipinos, group not regarded as aliens by common understanding, judicial construction, or any express definition contained in prior law.</p>

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<p><i>State ex rel. Scofield v. Easterday</i>, 182 Wash. 209, 212-213, 46 P.2d 1052 (1935)</p>	<p>An Act relating to the maintenance and control of county and secondary highways in counties of the first class, and declaring an emergency.</p>	<p>√</p>	<p>Upheld. Title sufficient to cover provision giving authority to county engineers of first class counties to control and manage county roads in their respective counties.</p>
<p><i>In re Estate of Peterson</i>, 182 Wash. 29, 33-34, 45 P.2d 45 (1935)</p>	<p>An Act authorizing the incorporation of mutual savings banks, defining their powers and duties, and prescribing penalties for violations hereof.</p>	<p>√*</p>	<p>Upheld. Title sufficiently broad to cover section governing joint tenancies.</p>
<p><i>National Ass'n of Creditors v. Pendleton</i>, 158 Wash. 137, 139-140, 290 P. 987 (1930)</p>	<p>An Act relating to justice courts, fixing the venue of civil actions therein and the jurisdiction of justices of the peace in relation thereto, prescribing duties of justices of the peace, and repealing certain acts relating thereto.</p>	<p>√</p>	<p>Upheld. Title encompassed both jurisdiction and venue of justice courts without violating single subject rule. The court classified jurisdiction and venue as subordinate subjects under the general subject of justice courts.</p>
<p><i>Nat'l Ass'n of Creditors v. Brown</i>, 147 Wash. 1, 264 P. 1005 (1928)</p>	<p>An act relating to the venue of civil actions in justice courts.</p>	<p>√**</p>	<p>Struck down. Title not sufficient to cover jurisdiction of justice courts because venue and jurisdiction represented two entirely distinct matters.</p>
<p><i>Maxwell v. Lancaster</i>, 81 Wash. 602, 605-607, 143 P. 157 (1914)</p>	<p>An act creating a department of agriculture, providing for the organization and administration thereof, defining the powers and duties of its officers and employes in relation to agriculture, horticulture, live stock, dairying, state fairs, foods, drinks, drugs, oils, and other kindred subjects, providing penalties for the violation thereof, and repealing certain acts and parts of acts.</p>	<p>√</p>	<p>Upheld. Title sufficiently covered repeal of act requiring county commissioners to levy horticultural tax because horticulture was a branch of agriculture and the title also provided notice that the act repealed certain acts and parts of acts.</p>
<p><i>State v. Parmenter</i>, 50 Wash. 164, 172-173, 96 P. 1047 (1908)</p>	<p>An act amending an act entitled, 'An act to amend section 3, of chapter 83 of the Laws of 1897 relating to revenue and taxation'</p>	<p>√</p>	<p>Upheld. Reference to wrong chapter in title was surplusage and without this error, the title clearly stated a single subject addressed by the provisions in the act.</p>

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<p><i>Zenner v. Graham</i>, 34 Wash. 81, 83, 74 P. 1058 (1904)</p>	<p>An act relating to husbands who connive at the prostitution of their wives and to persons who live off or accept the earnings of prostitutes, or solicit persons to go to houses of ill-fame for immoral purposes, or who permit or solicit females under eighteen years of age to enter any house of ill-fame, or other houses for immoral purposes, declaring the violation hereof a felony, and fixing a punishment.</p>	<p style="text-align: center;">√</p>	<p>Upheld. Title covered provision making it a felony for males who lived with or accepted the earnings of a prostitute.</p>
<p><i>Sengfelder v. Hill</i>, 21 Wash. 371, 383, 58 P. 250 (1899)</p>	<p>An act to protect innocent purchasers of community real property.</p>	<p style="text-align: center;">√</p>	<p>Struck down. Title was not sufficient to encompass section of act covering sales by single, as well as married persons.</p>
<p><i>Percival v. Cowychee & Wide Hollow Irrigation Dist.</i>, 15 Wash. 480, 46 P. 1035 (1896)</p>	<p>An Act providing for the organization and government of irrigating districts and the sale of bonds arising therefrom, and declaring an emergency.</p>	<p style="text-align: center;">√**</p>	<p>Struck down. Restrictive title did not sufficiently encompass provision for validating indebtedness incurred in past (retroactive application) by district organized under act and for levying of taxes to pay debt.</p>
<p><i>Lancey v. King County</i>, 15 Wash. 9, 10-11, 45 P. 645 (1896)</p>	<p>An act to grant to and prescribe powers of counties relative to public works undertaken or proposed by the state of Washington, or the United States, and declaring an emergency.</p>	<p style="text-align: center;">√</p>	<p>Upheld. Title encompassed the power to condemn and dispose of land by county for public use in relation to public improvements undertaken by the state and the United States.</p>

* Discussed in single subject section of opinion

** No explicit discussion of general versus specific distinction, but relies on general/specific language and principles, or lack thereof, in describing title or reaching decision.

Chart does not include:

- 1) Cases discussing single subject provision only: *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001).
- 2) Cases striking down statute without explicitly distinguishing between general and specific titles: *Patrice v. Murphy*, 136 Wn.2d 845, 966 P.2d 1271 (1998); *Fray v. Spokane County*, 134 Wn.2d 637, 952 P.2d 601 (1998); *State v. Thomas*, 103 Wn. App. 800, 14 P.3d 854 (2000).

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- review denied 143 Wn.2d 1022, 29 P.3d 719 (2001); *Slotemaker v. Int'l Fruit & Produce Co.*, 156 Wash. 574, 287 P. 883 (1930); *Potter v. Whatcom County*, 138 Wash. 571, 245 P. 11 (1926); *State ex rel. Arnold v. Mitchell*, 55 Wash. 513, 104 P. 791 (1909); *State v. King County*, 49 Wash. 619, 96 P. 156 (1908); *State v. Clark*, 43 Wash. 664, 86 P. 1067 (1906); *State v. Superior Court*, 28 Wash. 317, 68 P. 957 (1902); *Anderson v. Whatcom County*, 15 Wash. 47, 45 P. 665 (1896).
- 3) Cases upholding statute without explicitly distinguishing between general and specific titles: *In Re Boot*, 130 Wn.2d 553, 566, 925 P.2d 964, 971 (1996); *Washington State Sch. Dirs. Ass'n v. Dep't of Labor & Indus.*, 82 Wn.2d 367, 371, 510 P.2d 818 (1973); *Treffry v. Taylor*, 67 Wn.2d 487, 408 P.2d 269 (1965); *State ex rel. Port of Seattle v. Dep't of Pub. Serv.*, 1 Wn.2d 102, 95 P.2d 1007, 1011 (1939); *In re Estate of Button*, 190 Wash. 333, 67 P.2d 876 (1937); *Hacker v. Barnes*, 166 Wash. 558, 7 P.2d 607, 609 (1932); *Hemmi v. James*, 164 Wash. 170, 2 P.2d 750 (1931); *In re Hulet*, 159 Wash. 98, 292 P. 430 (1930); *Fisher Flouring Mills Co. v. Brown*, 109 Wash. 680, 187 P. 399 (1920); *Archibald v. N. Pac. R. Co.*, 108 Wash. 97, 183 P. 95 (1919); *State v. Shorrock*, 55 Wash. 208, 95 P. 214 (1909); *In re Donnellan*, 49 Wash. 460, 95 P. 1085 (1908); *Marston v. Humes*, 3 Wash. 267, 28 P. 520 (1891).
 - 4) Cases in which reference to general v. specific title is considered dictum by court: *Gilman v. State Tax Comm'n*, 32 Wn.2d 480, 202 P.2d 443 (1948).
 - 5) Cases limiting application of statute based on contents of title: *Howlett v. Cheetham*, 17 Wash. 626, 50 P. 522 (1897).

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

Kusum L. Batey,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT
SECURITY DEPARTMENT,

Respondent.

Case No.: 57513-9-I

DECLARATION OF SERVICE
AND MAILING

I declare that I served a copy of the Reply Brief with Appendix and this Declaration of Service and Mailing by email and U.S. mail first-class postage prepaid to the addresses listed below, as agreed with counsel, on July 31, 2006:

Bruce L. Turcott, Esq., BruceT1@ATG.WA.GOV
Jerald R. Anderson, Esq., JerryA1@ATG.WA.GOV

Office of the Attorney General
Licensing and Administrative Law Division
1125 Washington St. SE
P. O. Box 40110
Olympia, WA 98504-0110

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: July 31, 2006
Place: Seattle, Washington


Carrie Gaasland
(206) 543-3450