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Supreme Court No. 83768-6

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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JANE ROE,

Appellant,

v.

TELETECH CUSTOMER CARE  
MANAGEMENT (COLORADO) LLC,

Respondent.

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**SUPPLEMENTAL BRIEF OF RESPONDENT TELETECH  
CUSTOMER CARE MANAGEMENT (COLORADO) LLC**

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James M. Shore, WSBA #28095  
Molly M. Daily, WSBA #28360  
STOEL RIVES LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
(206) 624-0900

Attorneys for Respondent

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## I. INTRODUCTION

In voting to decriminalize the medical use of marijuana, the voters of Washington State approved an initiative—the Medical Use of Marijuana Act (“MUMA”)—that specifically rejected any obligation to make “any accommodation of any medical use of marijuana in any place of employment.” Notwithstanding that plain and unambiguous language, Appellant Jane Roe contends that TeleTech Customer Care Management (Colorado), LLC wrongfully terminated her employment after she violated TeleTech’s substance abuse policy by testing positive for marijuana.

The Court of Appeals properly rejected Roe’s claims, and its judgment should be affirmed. Where, as here, a statute is enacted through a voter initiative, the intent of the voters controls the interpretation of the statute. The voters’ intent here is clear: MUMA provides only a defense to state criminal prosecution. It does not impose any duty on employers to accommodate medical marijuana use in violation of federal law and their own zero-tolerance policies. To the contrary, the initiative enacted by the voters specifically disclaimed any intention to “accommodate” any “medical use of marijuana in any place of employment.” Roe’s attempt to expand MUMA far beyond what the voters intended must be rejected. Instead, this Court should honor the voters’ intent as memorialized in the plain, unambiguous language of the initiative they approved.

The supreme courts of both California and Oregon reached the same conclusion—ruling that their states’ similar medical marijuana laws do not require employers to accommodate medical marijuana use. *Emerald Steel Fabricators, Inc. v. BOLI*, CA A130422, 2010 WL 1490352 (Ore. April 14, 2010); *Ross v. RagingWire Telecomm., Inc.*, 174 P.3d 200, 206-07 (Cal. 2008). This Court should likewise reject Roe’s attempt to expand MUMA’s scope far beyond what the voters intended in approving an initiative limited to decriminalizing medical marijuana use.

Any other result would not only dishonor the intent of Washington voters, but also set a dangerous precedent with respect to the initiative process. Specifically, it could give drafters a perverse incentive to use vague language to appeal to voters, secure in the knowledge that courts would read the language much more broadly after the fact to impose obligations that would not likely have been approved by the voters themselves. Nothing in law or logic compels such a result. This Court should therefore reject Roe’s claims and affirm the judgment below.

## II. STATEMENT OF THE CASE

### A. MUMA

The voters enacted MUMA in November 1998 by way of Initiative Measure No. 692 (“I-692”). Former RCW 69.51A.005 (1999); Clerk’s Papers (“CP”) 177-86. MUMA provided qualified medical marijuana

users with an affirmative defense to state criminal prosecutions. Former RCW 69.51A.040(1); *see also State v. Tracy*, 158 Wn.2d 683, 691, 147 P.3d 559 (2006) (MUMA created a compassionate use defense against criminal charges). MUMA conferred similar protections to primary caregivers and physicians. *Id.*; former RCW 69.51A.030. The voters' limited intent to provide an affirmative defense to criminal prosecution for qualified patients, caregivers, and physicians was memorialized in the Act itself.<sup>1</sup> Addressing the purpose and intent of the statute, MUMA states that “[q]ualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana.” Former RCW 69.51A.005 (emphasis added). MUMA contains only one reference to employment. When Roe was terminated, that reference provided: “*Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment . . .*” Former RCW 69.51A.060(4) (1999).<sup>2</sup>

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<sup>1</sup> The full text of the original version of MUMA is set forth in the appendix to this brief. Relevant portions of the statute are quoted and discussed in the body of this brief as appropriate.

<sup>2</sup> The legislature amended MUMA in July 2007 (long after Roe's termination). That subsection now reads, in relevant part: “Nothing . . . requires any accommodation of any *on-site* medical use of marijuana in any place of employment . . .” RCW (...continued)

**B. Roe's Employment With TeleTech**

TeleTech is an outsourcing company. CP 215-16 (at ¶ 2). One of its customers is Sprint Nextel, for whom TeleTech operates a customer service call center in Bremerton, Washington. CP 216 (at ¶ 3). In the interests of protecting its employees, its customers, and the public at large, TeleTech has a substance abuse policy covering all applicants. CP 217 (at ¶ 6), 220-31. It provides: "All applicants . . . to whom TeleTech has given a conditional offer of employment, are required to submit to a pre-employment drug test and must receive a negative result as a condition of employment." CP 221. It further provides: "Any applicant who receives a confirmed positive drug test result will be ineligible for employment." *Id.* In addition, TeleTech's contract with Sprint Nextel requires pre-employment drug testing. CP 217 (at ¶ 6). TeleTech makes no exception for medical marijuana in policy or practice. *Id.*; CP 219 (at ¶ 11).

In October 2006, Roe received a conditional offer of at-will employment from TeleTech for a customer service position. CP 217 (at ¶ 7); CP 224-25. The offer letter stated: "This offer is contingent upon receiving favorable results from . . . drug screening . . . ." CP 225.

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(...continued)

69.51A.060(4) (2007) (emphasis added). CP 168-72. The amendments are not retroactive, as Roe has acknowledged and, only the original statute is at issue.

TeleTech permitted Roe to begin training while waiting for the results of the drug screen. CP 218-19 (at ¶ 10). Roe, however, was using marijuana more than four times a day, allegedly in conformance with MUMA. CP 187-206. When TeleTech learned that Roe had tested positive for marijuana, it terminated her employment. CP 217 (at ¶ 6), 219 (at ¶¶ 11-12), 220-27, 232-35.

### III. ARGUMENT

#### A. **The Version of MUMA In Effect At The Time Of Roe's Termination Did Not Prohibit Teletch From Terminating Roe**

##### 1. **The Voters Did Not Intend To Confer Employment Rights**

When determining the meaning of a statute enacted through the initiative process, “the court’s purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2001). Voter intent is determined from the language of the initiative “as the average informed voter voting on the initiative would read it.” *Id.* “Where the language of an initiative enactment is ‘plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation.’” *Id.*, 142 Wn.2d at 205 (*quoting State v. Thorne*, 129 Wn.2d 736, 762-63, 921 P.2d 514 (1996)). An ambiguity exists only

if the language of the enactment is susceptible to more than one reasonable interpretation. *Thorne*, 129 Wn.2d at 762-63.

**a. MUMA's Plain, Unambiguous Language Establishes The Voters Did Not Intend To Regulate Employment**

The Court of Appeals correctly held that “it is clear from a common sense reading of MUMA’s plain language that the voters did not intend to impose any duty on private employers to accommodate employee use of medical marijuana.” *Roe v. TeleTech Customer Care Mgm’t (Colorado), LLC*, 152 Wn. App. 388, 399, 216 P.3d 1055 (2009). The sole employment reference in the version of MUMA in effect when Roe was terminated unambiguously affirmed the lack of any such duty. That reference clearly states: “Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment . . . .” Former RCW 69.51A.060(4) (1999). That provision is subject to only one reasonable interpretation and no other language in MUMA suggests a different intent. To the contrary, the voters’ limited intent to decriminalize medical marijuana use for purposes of state law is memorialized in MUMA itself. Former RCW 69.51A.005. The Court need look no further to determine Roe’s MUMA claim fails. *McGowan v. State*, 148 Wn.2d 278, 288-89, 60 P.3d 67 (2002) (“Where the people’s intent is clearly expressed in the initiative measure, the court need not look

to the voters' pamphlet or other extrinsic sources to ascertain the voters' intent."); *Amalgamated Transit*, 142 Wn.2d at 205 (same).

The California Supreme Court reached the same conclusion in *Ross v. RagingWire Telecomm., Inc.*, 174 P.3d 200, 206-07 (Cal. 2008). Like Roe, the plaintiff in *Ross* was terminated from employment after testing positive for marijuana. The plaintiff alleged, *inter alia*, that his termination violated California's Compassionate Use Act of 1996, which is very similar to MUMA. The *Ross* court held that nothing in the text or history of the California statute suggested the voters intended for it to address workplace rights. *Ross*, 174 P.3d at 202. The *Ross* court noted:

For a court to construe an initiative statute to have substantial unintended consequences strengthens neither the initiative power nor the democratic process; the initiative power is strongest when courts give effect to the voters' formally expressed intent, without speculating about how they might have felt concerning subjects on which they were not asked to vote.

*Id.* at 207. The same is true here.

Arguing against that conclusion, Roe unsuccessfully strains to create ambiguity. Roe first contends that the opening paragraph of MUMA's preamble shows the voters' purpose was broader than providing a defense to criminal prosecution. The preamble merely states that "patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana." Former RCW

69.51.005. That sentiment, which is consistent with the stated intent to decriminalize medical marijuana under state law, does not suggest an intent to impact the workplace. A patient can use medical marijuana without receiving preferential job protections. This same argument was soundly rejected in *Ross*. 174 P.3d at 206 (“An employer’s refusal to accommodate an employee’s use of marijuana does not affect, let alone eviscerate, the immunity to criminal liability provided in the act.”)

Roe next argues that the second sentence of former RCW 69.51A.040(1) prohibits *anyone* from denying a qualified patient *any* right or privilege or from penalizing them in *any* manner—whether the state, the federal government, a private individual, or a private entity. As the Court of Appeals correctly recognized, Roe’s argument takes one sentence of the statute out of context. *Roe*, 152 Wn. App. at 397-98. It is critical to look at the subsection as a whole, which provides:

**Qualifying patients’ affirmative defense.**

(1) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. *Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.*

RCW 69.51A.040(1) (bolded emphasis in original; italicized emphasis added). Read in context, the only reasonable interpretation of the reference to “rights and privileges” is the intent to prohibit the state, not private entities or anyone else, from penalizing medical marijuana users *who are charged with a violation of state law*. The sentence cannot be construed, as Roe suggests, to apply to private individuals and entities in all contexts. The Court of Appeals correctly rejected that argument.

Finally, Roe argues that former RCW 69.51A.060(4) referred only to *on-site* marijuana use and thus required employers to accommodate *off-site* use. In so arguing, Roe asks the Court to insert a word into the statute that is not there, which it should not do. *State v. Watson*, 146 Wn.2d 947, 955, 53 P.3d 1 (2002) (court will not add to or subtract from clear language of a statute even if it believes the Legislature intended something else but did not adequately express it). Roe’s proposed distinction between on-site and off-site use cannot be derived from the subsection’s clear language.<sup>3</sup> Moreover, even if the subsection could be read to be limited to “on-site” use, MUMA would be silent as to whether an obligation exists to accommodate behavior outside the workplace.

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<sup>3</sup> Cf. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988) (when interpreting voter initiative language, we do not read into the

(...continued)

Inserting “on-site” into RCW 69.51A.060(4) does not affirmatively impose a duty on employers with respect to off-site use. It follows, therefore, that Roe’s argument relies on a negative inference to show that there is an affirmative duty to accommodate at-home use. The Court of Appeals correctly held that the average, informed voter would not draw this negative inference. *Roe*, 152 Wn. App. at 398-99. The Court should refuse to recognize a duty when one is not expressly declared.

Equally important is that if, as Roe advocates, MUMA confers “broad rights” to marijuana users beyond protection from criminal prosecution under state law, then it would be preempted by the federal Controlled Substances Act (“CSA”) and would be void.<sup>4</sup> If a state statute “actually conflicts” with a valid federal statute, then the state statute is void. *Edgar v. Mite Corp.*, 457 U.S. 624, 631, 102 S. Ct. 2629, 73 L. Ed. 2d 269 (1982). An actual conflict exists where: (1) “compliance with both federal and state law is impossible” or (2) the “state law stands as an

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(...continued)

initiative “technical and debatable legal distinction[s]” not apparent to the average informed lay voter) (internal citation omitted).

<sup>4</sup> Marijuana remains a Schedule I drug under the CSA, with Congress concluding that marijuana “lack[s] any accepted medical use, and [that there is an] absence of any accepted safety for use in medically supervised treatment.” *Gonzales v. Raich*, 545 U.S. 1, 14, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). Therefore, marijuana is illegal under federal law regardless of its use. 21 U.S.C. § 841; *U.S. v. Oakland Cannabis Buyers’ Corp.*, 532 U.S. 483, 491, 121 S. Ct. 1711, 149 L. Ed. 2d 722 (2001) (any medical exception for marijuana conflicts with CSA).

obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* To avoid such conflicts, this Court has held that courts should resist an interpretation of a statute that would render any portion void. *Hayes v. Yount*, 87 Wn.2d 280, 290, 552 P.2d 1038 (1978). Roe’s argument ignores this important legal principle.

There is no disputing that marijuana use is illegal under federal law. A state statute requiring employers to accommodate medical marijuana use, or prohibiting users from being penalized in any way, would be an obstacle to the accomplishment of the full purposes and objectives of Congress in passing the CSA—namely, to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances. In fact, such a requirement could put employers at risk of facing criminal drug charges for aiding and abetting drug use.

Teletech is not alone in asserting such an argument. Just last month, the Oregon Supreme Court relied on federal preemption grounds in ruling that employers do not have to accommodate medical marijuana use. In *Emerald Steel Fabricators, Inc. v. BOLI*, CA A130422, 2010 WL 1490352 (Ore. April 14, 2010), the Oregon Bureau of Labor and Industries (“BOLI”) brought a lawsuit on behalf of an employee who was terminated after notifying his employer that he used medical marijuana. BOLI argued

that Oregon's disability discrimination law requires employers to accommodate an employee's use of medical marijuana.<sup>5</sup> BOLI recognized that marijuana use is illegal under federal law and that Oregon's disability discrimination law does not require employers to accommodate illegal drug use, but claimed that because medical marijuana use was authorized under the Oregon Medical Marijuana Act, medical marijuana was not an illegal drug for purposes of Oregon's disability discrimination law.

The Oregon Supreme Court disagreed. It recognized that Oregon could choose to decriminalize the use of medical marijuana for purposes of state law but found that the state had no power to authorize the use of medical marijuana. The court held that because a provision in Oregon's Medical Marijuana Act affirmatively authorized the use of marijuana for medical purposes, that provision was preempted by federal law and was "without effect."<sup>6</sup> *Emerald Steel*, 2010 WL 1490352 at \*\*6-18. The same

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<sup>5</sup> Notably, Roe did not bring a reasonable accommodation claim under RCW 49.60 and has conceded she did not qualify as disabled. Therefore, whether an employer has an obligation to accommodate medical marijuana under RCW 49.60 is not at issue here. In any event, the Washington State Human Rights Commission has expressly stated that "it would not be considered to be a reasonable accommodation of a disability for an employer to violate federal law, or allow an employee to violate federal law, by employing a person who uses medical marijuana." <http://www.hum.wa.gov/.../medical%20marijuana.doc>; see also *Hines v. Todd Shipyards Corp.*, 127 Wn. App. 356, 373, 112 P.3d 552 (2005) (illegal drug use not a reasonable accommodation).

<sup>6</sup> The California Supreme Court recognized this same problem: "No state law could completely legalize marijuana for medical purposes because the drug remains (...continued)

is true here. For this reason, as well as the additional reasons set forth above, the Court should reject Roe's interpretation of MUMA.

**b. Even If MUMA Was Ambiguous, Extrinsic Evidence Of Voter Intent Supports That MUMA Is Merely A Decriminalization Statute**

If the Court nevertheless were to find that MUMA is ambiguous (which it is not), it can properly look to extrinsic aids to determine voter intent. *Amalgamated Transit*, 142 Wn.2d at 205-06 (citing *Thorne*, 129 Wn.2d at 763). Such evidence, if considered, confirms that voters did not intend to provide broad employment protections to users of medical marijuana. For example, the statements in the voters pamphlet portray the sole purpose of MUMA as decriminalization. The explanatory statement written by the Attorney General focused on marijuana's status in Washington as an illegal drug. CP 182-83. The Statement For I-692, drafted by the initiative's proponents, made the following representation:

*But patients who use medical marijuana, and doctors who recommend it, are still considered criminals in this state. Initiative 692 will protect patients who suffer from terminal and debilitating illnesses, and doctors who recommend the use of medical marijuana. That's why we need I-692.*

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(...continued)

illegal under federal law . . . even for medical users. . . . Instead of attempting the impossible, as we shall explain, California's voters merely exempted medical users and their primary caregivers from criminal liability under two specifically designated state statutes." *Ross* at 204.

CP 181 (emphasis added). Nowhere in the Statement For I-692 did the proponents of the initiative inform the voters that one of the purposes of the initiative was to confer employment protections. To the contrary, the proponents expressly assured voters, under the heading “**ADDITIONAL SAFEGUARDS IN I-692,**” that I-692 “[p]rohibits marijuana use . . . in the workplace.” CP 181 (emphasis in original). Moreover, one of the headings in the Statement For I-692 was “**I-692 IS LIMITED AND FOCUSED ON MEDICAL NEEDS.**” *Id.* Even more telling, perhaps, is the absence of any mention of the broad implications of MUMA by the opponents of I-692. If, as Roe claims, the initiative were intended to prohibit employers from enforcing otherwise legitimate workplace rules forbidding the use of illegal substances, one would expect that at least some business advocacy groups would have highlighted that fact by speaking out against it. The complete absence of any such dialogue is strong evidence that no one construed I-692 to be so far-reaching.

Had the proponents of I-692 truly intended for it to provide employment protections, they could have, and should have, been upfront with the voters on that point. As the California Supreme Court observed in *Ross*, “the proponents’ ballot arguments reveal a delicate tightrope walk designed to induce voter approval, which we would upset were we to

stretch the proposition's limited immunity to cover that which its language does not.” 174 P.3d at 206-07 (Cal. 2008) (quoting *People v. Galambos*, 104 Cal. App. 4th 1147, 1152 (2002)).

In addition, the information presented to the voters in the media prior to the election contained no discussion of employment ramifications. So far as TeleTech is aware, the newspaper articles and editorials leading up to the election all focused solely on the decriminalization aspect of the initiative. CP 296-312, 506-35, 606-11.<sup>7</sup> Not one mentioned employment. *Id.* Indeed, on October 30, 1998—a mere three days before the election—Timothy Killian, a co-drafter of and campaign manager for I-692, was quoted as follows: “The simple question that needs to be asked is: Do we as Washington citizens feel we need to arrest seriously ill patients if they find relief from using marijuana?” CP 299. The lack of any discourse on the employment ramifications of the initiative strongly suggests that the public did not interpret this statute in the manner Roe advocates.

Roe makes two unsupportable arguments for why extrinsic evidence favors her interpretation. First, Roe cites to Killian's declaration—prepared solely for this litigation more than 10 years after

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<sup>7</sup> The admissibility of this evidence was briefed by TeleTech in its Brief of Respondent (August 28, 2008) at 28-30 n.13.

MUMA's enactment—in which he claims that I-692's intent was to protect qualified patients from “other secondary, adverse consequences” of their medical use, including employment. CP 291. Killian's alleged intent is irrelevant to determining the voters' intent because it was never communicated to them. There is no evidence that Killian, or any other sponsor, informed the voters *prior to* the November 1998 election that I-692 would confer employment protections to medical marijuana users. There is thus no basis for imputing his beliefs to the voters. *See, e.g., RagingWire*, 174 P.3d at 208 (refusing to impute intent of the Compassionate Use Act's authors to entire legislature because they did not assert “that they shared their view of the proposed legislation with the Legislature as a whole.”).<sup>8</sup> To afford any weight to Killian's after-the-fact assertions of his alleged intent would set a dangerous precedent, giving drafters an incentive to use vague language to appeal broadly to voters, rather than being clear and specific about what is before the voters. The entire initiative process would suffer from such a ruling.

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<sup>8</sup> Citing *In re Marriage of Kovacs*, 121 Wn.2d 795, 854 P.2d 629 (1993), and *Duke v. Boyd*, 133 Wn.2d 80, 942 P.2d 351 (1997), Roe claims Washington courts “pay particular attention to the statements of prime drafters and sponsors of the enactment at issue.” Petition at 10. At best, *Kovacs* and *Duke* hold that statements made by drafters and sponsors *to* the Legislature *before* passage may shed light on Legislative intent.

Second, Roe argues that the Legislature's 2007 amendment to RCW 69.51A.060(4) is extrinsic evidence that the voters intended all along for that subsection to require employers to accommodate off-site use. She argues that the addition of the term "on-site" would be meaningless if MUMA were only a decriminalization statute. As an initial matter, this Court should refuse to look to the Legislature's amendments when determining what the voters intended almost ten years earlier. Moreover, there is no evidence in the legislative history or otherwise that the Legislature intended to confer employment protections by inserting the phrase "on-site" into RCW 69.51A.060(4).<sup>9</sup> CP 169-76, 208-11, 213-14. There is still no affirmative duty expressly imposed on employers. Indeed, the *Ross* court rejected an identical argument made by the plaintiff in that case. It found that the statute's "literal effect" was to negate "any expectation that the immunity to criminal liability for possessing marijuana granted in the Compassionate Use Act gives medical users a civilly enforceable right to possess the drug at work . . ." 174 P.3d at 207.

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<sup>9</sup> If the Legislature intended the amendments to confer a duty on employers, the amendments are unconstitutional because the bill's title did not express the subject of employment. Wash. Const. art. II, § 19 ("No bill shall embrace more than one subject, and that shall be expressed in the title."). A bill's title must give concise information about the bill's contents. *State ex rel. Seattle Elec. Co. v. Superior Court*, 28 Wn. 317, 321, 68 P. 957 (1902). The 2007 Senate Bill was entitled "An act relating to medical use of marijuana." CP 208. Nothing in that title would give notice to employers that their rights were affected. *Patrice v. Murphy*, 136 Wn.2d 845, 854, 966 P.2d 1271 (1998).

It also noted that “given the controversy that would inevitably have attended a legislative proposal to require employers to accommodate marijuana use, we do not believe that [the Compassionate Use Act] can reasonably be understood as adopting such a requirement silently and without debate.” *Id.* The same reasoning applies here.

Simply put, the extrinsic evidence only confirms that the voters did not intend for MUMA to impact employment law. Roe’s extrinsic evidence arguments should be rejected.

## **2. MUMA Does Not Provide a Private Cause of Action**

The Court of Appeals’ decision can also be upheld because MUMA does not create a private cause of action. Roe concedes the voters did not explicitly provide her with a right of recovery, arguing instead that her right should be implied. App. Br. at 25. A court should imply a cause of action from a statute only if (1) the plaintiff is within the class for whose “especial” benefit the statute was enacted, (2) legislative intent, explicitly or implicitly, supports creating or denying a remedy, *and* (3) implying a remedy is consistent with the legislation’s underlying purpose. *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784 P.2d 1258 (1990).

Although Roe, as a medical marijuana user, is within the benefited class, there is no evidence that the voters intended to create a remedy, and implying one is inconsistent with MUMA’s underlying purpose. The

voters did not intend to alter employment law. *See, e.g., M.W. v. DSHS*, 149 Wn.2d 589, 601, 70 P.3d 954 (no remedy because harm was outside statutory duty). As this Court has aptly noted: “We will not imply a private cause of action when the drafters of a statute evidenced a contrary intent; public policy is to be declared by the Legislature, not the courts.” *Cazzanigi v. General Elec. Credit Corp.*, 132 Wn.2d 433, 449, 938 P.2d 819 (1997) (quoting *Bird-Johnson Corp. v. Dana Corp.*, 119 Wn.2d 423, 428, 833 P.2d 375 (1992)). On this basis too, Roe’s arguments fail.

**B. MUMA Does Not Support Roe’s Public Policy Claim**

Roe also brought a claim for wrongful termination in violation of public policy, claiming an employer cannot discharge an employee “solely because of her physician-authorized, at home use of medical marijuana in accordance with the MUMA.” Petition for Review at 1. Roe relied solely on MUMA as her claimed public policy.<sup>10</sup> The Court of Appeals correctly held that because MUMA’s policy is to protect qualified patients and physicians from state prosecution, Roe could not establish the clarity element. *Roe*, 152 Wn. App. at 399-400; *see also Ross*, 174 P.3d at 208 (rejecting public policy claim, holding “[n]othing in the [California law’s]

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<sup>10</sup> An ACLU amicus brief claims public policy sources Roe never raised. As stated in TeleTech’s Answer to that brief (filed January 15, 2010) and opposition to the ACLU’s motion for leave to file (filed December 21, 2009), these arguments lack merit.

text or history indicates the voters intended to articulate any policy concerning marijuana in the employment context, let alone a fundamental public policy requiring employers to accommodate marijuana use by employees.”). Moreover, Roe’s claimed public policy conflicts with both federal law as well as Washington public policy favoring safe workplaces. For these reasons – as well as the reasons set forth at pages 38-46 of TeleTech’s Brief of Respondent, filed August 27, 2008 – Roe’s public policy argument should be rejected.

#### IV. CONCLUSION

For the foregoing reasons, TeleTech respectfully requests that this Court affirm the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 3rd day of May, 2010.

STOEL RIVES LLP



James M. Shore, WSBA #28095  
Molly M. Daily, WSBA #28360  
Attorneys for Respondent

# **APPENDIX A**

"Practitioner" means a physician licensed pursuant to RCW 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 to 43.70.920.

**9.51.040 Controlled substances therapeutic research program.** (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. Upon promulgation, the board shall take into consideration pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient shall be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 to 43.70.920.

**69.51.050 Patient qualification review committee.** (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology.

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical radiology.

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 to 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected

with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

**69.51.060 Sources and distribution of marijuana.** (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

**69.51.080 Cannabis and related products considered Schedule II substances.** (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

**Chapter 69.51A RCW  
MEDICAL MARIJUANA**

Sections

69.51A.005	Purpose and intent.
69.51A.010	Definitions.
69.51A.020	Construction of chapter.
69.51A.030	Physicians excepted from state's criminal laws.
69.51A.040	Qualifying patients' affirmative defense.
69.51A.050	Medical marijuana, lawful possession—State not liable.
69.51A.060	Crimes—Limitations of chapter.
69.51A.070	Addition of medical conditions.
69.51A.900	Short title—1999 c 2.
69.51A.901	Severability—1999 c 2.
69.51A.902	Captions not law—1999 c 2.

**69.51A.005 Purpose and intent.** The people of Washington state find that some patients with terminal or debilitating

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ing illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial. [1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

(2) "Primary caregiver" means a person who:

(a) Is eighteen years of age or older;

(b) Is responsible for the housing, health, or care of the patient;

(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.

(3) "Qualifying patient" means a person who:

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

(c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

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(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Any other medical condition duly approved by the Washington state medical quality assurance board [commission] as directed in this chapter.

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035. [1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.020 Construction of chapter.** Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for nonmedical purposes. [1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.030 Physicians excepted from state's criminal laws.** A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient. [1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.040 Qualifying patients' affirmative defense.**

(1) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(2) The qualifying patient, if eighteen years of age or older, shall:

(a) Meet all criteria for status as a qualifying patient;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

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(c) Present his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana.

(3) The qualifying patient, if under eighteen years of age, shall comply with subsection (2)(a) and (c) of this section. However, any possession under subsection (2)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

(4) The designated primary caregiver shall:

(a) Meet all criteria for status as a primary caregiver to a qualifying patient;

(b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;

(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;

(d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and

(e) Be the primary caregiver to only one patient at any one time. [1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.050 Medical marijuana, lawful possession—State not liable.** (1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient. [1999 c 2 § 7 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.060 Crimes—Limitations of chapter.** (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010(5)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health

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or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.070 Addition of medical conditions.** The Washington state medical quality assurance board [commission], or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted by physicians or patients to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance board [commission] shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board [commission] shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.900 Short title—1999 c 2.** This chapter may be known and cited as the Washington state medical use of marijuana act. [1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.901 Severability—1999 c 2.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.902 Captions not law—1999 c 2.** Captions used in this chapter are not any part of the law. [1999 c 2 § 11 (Initiative Measure No. 692, approved November 3, 1998).]

Chapter 69.52 RCW

IMITATION CONTROLLED SUBSTANCES

Sections

69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.070	Violations—Juvenile driving privileges.
69.52.900	Severability—1982 c 171.
69.52.901	Effective date—1982 c 171.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

**69.52.010 Legislative findings.** The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation con-

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