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NO. 86563-9

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE NURSES ASSOCIATION, on behalf of certain  
employees it represents, and VIVIAN MAE HILL, individually and on  
behalf of others similarly situated,

Plaintiffs-Petitioners,

v.

SACRED HEART MEDICAL CENTER,

Defendant-Respondent.

AMICUS BRIEF OF  
THE AMERICAN NURSES ASSOCIATION  
IN SUPPORT OF PETITIONERS

Alice L. Bodley, DC Bar #939009  
General Counsel  
American Nurses Association  
8515 Georgia Avenue, Suite 400  
Silver Spring, MD 20910  
Appearing *Pro Hac Vice*

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE  
999 Third Avenue, Suite 3650  
Seattle, WA 98104  
Tel. (206) 223-0303  
Fax (206) 223-0246

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## I. IDENTITY AND INTEREST OF AMICUS

Amicus American Nurses Association (“ANA”) is the largest organization of registered nurses (“RNs”) in the United States. Through its state nurses association (including Petitioner) and its direct membership, ANA has approximately 175,000 members. There are 27 national specialty nursing organizations associated with ANA as Organizational Affiliates, representing an additional total of approximately 330,000 registered nurses. ANA promulgates the *Code of Ethics for Nurses*, ANA (2010 Reissue) and scopes and standards of practice for registered nurses in a broad range of practice settings.

ANA represents the interests of nurses through policy development and advocacy efforts, with emphases on quality and patient safety, safe staffing, safe patient handling, access to health care, fatigue, and whistleblower protection. ANA is uniquely positioned to provide the Court with information about the critical importance of providing rest breaks to registered nurses because of its research and policy regarding the effects of fatigue on patient safety. An overtime pay case involving missed rest breaks certainly pertains to fair and legal compensation, but as importantly, it deals with the financial incentives to employers to maintain adequate staffing so that registered nurses receive the rest breaks to which they are entitled. Ultimately, avoiding nurse fatigue saves lives.

One of ANA's foundational documents, the *Code of Ethics for Nurses with Interpretive Statements*, ANA (2001 Edition), provides that the "nurse promotes, advocates for, and strives to protect the health, safety and rights of the patients." ANA, p. 16. This ethical principle led to the conclusion that the registered nurse must take appropriate action when confronting impediments to good practice, including "potential impairment that may result from fatigue ...." *Assuring Patient Safety: Registered Nurses' Responsibility in All Roles and Settings to Guard Against Working When Fatigued*, ANA, p. 2 (Dec. 8, 2006). The need to provide adequate rest breaks is paramount, and proper compensation at required overtime rates may prompt employers to allocate sufficient staffing resources to support their nursing staff in the delivery of high quality, ethical care.

## II. STATEMENT OF THE CASE

Amicus ANA adopts the Statement of the Case provided by petitioners Washington State Nurses Association ("WSNA") and Vivian Mae Hill.

### III. ARGUMENT<sup>1</sup>

#### A. **The Missed Rest Breaks of Registered Nurses Constitute an Extension of the Work Day and Are Subject to Overtime Payments.**

In *Wingert v. Yellow Freight Systems, Inc.* (“*Wingert*”), 146 Wn.2d 841, 50 P.3d 256 (2002), this Court determined that missed breaks “extended” the work day by the duration of the missed break. 146 Wn.2d at 849. In the case at bar, the Court of Appeals juxtaposed the reference to the extension of the day with another statement in *Wingert* that acknowledged that the employer received additional labor from its staff “during” the work shift. Based upon that statement in *Wingert*, the Court of Appeals concluded in this case, that the missed break time, if it occurred during the nurse’s 40-hour work week, would not constitute overtime. This conclusion is error.

Nurses who work through their breaks perform additional labor over and above the time for which the employer pays. WAC 296-128-092(4) provides that employers must allow 10 minutes of rest break time for every four hours of work for which the employer pays. Accordingly, Respondent Sacred Heart Medical Center (SHMC) must pay for the two rest breaks required during an eight hour day. SHMC has already accounted for that payment to the nurses when it pays for 40 hours of

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<sup>1</sup> ANA adopts and incorporates by reference WSNA’s legal argument at pages 5-16 of its brief.

work in a week. The performance of work during a rest period is *de facto* in addition to the 40 hour work week. Such work performance should not occur without both a *request* to work overtime and *payment* for that overtime.

**B. Overtime Laws Support Better Patient Outcomes.**

**1. Overtime Laws Should be Construed Liberally.**

Washington's overtime laws are to be liberally construed in favor of the employee. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 852, 153 P.3d 846 (2007). This comports with well-established federal law. *See, e.g., Lambert v. Ackerly*, 180 F.3d 997, 1003 (9<sup>th</sup> Cir. 1999), *citing Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597, 64 S. Ct. 698 (1944) ("We are not here dealing with mere chattels or articles of trade but with the rights of those who toil .... Those are rights that Congress has specifically legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner"). Appropriate construction of the overtime law in Washington will serve the purposes intended by the statutes. It will benefit not only nurses, but also the patients in their care.

**2. Incentives to Provide RNs Their Rest Breaks Will Yield Better Patient Outcomes.**

It is well established that extended work hours in nursing leads to an increase in errors. For example, one study revealed that “work duration, overtime and number of hours worked per week had significant effects on errors.” Ann E. Rogers, et al., *The Working Hours of Hospital Staff Nurses and Patient Safety*, Data Watch (July/Aug. 2004), p. 206. It has been found that

Nurses working shifts in excess of 8 hours report more medication errors, difficulty staying awake and actually falling asleep during work hours, a decrease in productivity the last 4 hours of the shift, an increased risk of errors and near errors associated with decreased vigilance.

Simone M. Keller, RN, BSN, *Effects of Extended Work Shifts and Shift Work on Patient Safety, Productivity, and Employee Health*, AAOHN (December 2009), p. 498. The negative effect of extended shifts can be reduced by “allow[ing] time for breaks, to move around, and to interact with other workers.” *Id.*, p. 500.

After reviewing the literature with respect to the effect of nurse fatigue on patient safety, ANA concluded that “[n]urse managers and administrators have a responsibility to examine and institute scheduling practices that promote safe work hours, **adequate break time**, and minimal rotation of shifts.” *Assuring Patient Safety: The Employers’ Role in Promoting Healthy Nursing Work Hours for Registered Nurses in All*

*Roles and Settings*, ANA, (Dec. 6, 2006), p. 6 (emphasis added). This conclusion was based on evidence that long hours, rotating shifts and insufficient breaks led to a number of problems, including:

... slowed reaction time, lapses of attention to detail, errors of omission, compromised problem solving, reduced motivation and decreased energy for successful completion of required tasks.

*Id.* at 2.

The law in Washington is quite consistent with the advice of researchers and with ANA's policy, as it is clear that employers must provide their staff with the opportunity to take a meaningful rest break. In a recent decision, the Court of Appeals reiterated its determination that a true rest break must be one that "provide[s] relief from work or exertion." *Pellino v. Brink's Inc.*, No. 65077-7-I, 2011 WL 5314222 (Nov. 7, 2011), citing *White v. Salvation Army*, 118 Wn. App. 272, 283, 75 P.3d 990 (2003). Simply paying for missed breaks is not enough (although that is required as well). The law calls for RNs to be given their break time. Compliance with the law's mandate will result in better outcomes for patients.

#### IV. CONCLUSION

Pursuant to RAP 13.4(b)(1) and (b)(4), this Court should grant the petition for review because the decision below conflicts with the precedent in *Wingert*. This legal error would permit a pay practice that is not in

alignment with good public policy. While payment of overtime under the circumstances of this case is dictated by law, it has the added benefit of incentivizing hospital employers to attain proper staffing and scheduling in order to allow RNs to take their rest breaks. Ultimately, nurses' unencumbered rest breaks will inure to the benefit of patients.

DATED: November 28, 2011.

Respectfully submitted,



Alice L. Bodley (DC Bar #939009)

General Counsel

American Nurses Association



Eleanor Hamburger (WSBA #26478)

Sirianni Youtz Spoonemore

Attorneys for Proposed Amicus American  
Nurses Association

**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury pursuant to the laws of the United States and the State of Washington, that on November 28, 2011, a true copy of the foregoing document was served upon counsel of record as indicated below:

David Campbell  
Carson Glickman-Flora  
SCHWERIN CAMPBELL BARNARD  
IGLITZIN & LAVITT  
1'8 W. Mercer Street, Suite 400  
Seattle, WA 98119  
*Counsel for Petitioners*

By U.S. Postal Service  
 By Legal Messenger  
 By Facsimile  
 By Email  
*Tel. (206) 285-2828*  
*Fax (206) 757-7700*  
*[campbell@workerlaw.com](mailto:campbell@workerlaw.com)*  
*[flora@workerlaw.com](mailto:flora@workerlaw.com)*

Paula L. Lehmann  
Michael J. Killeen  
DAVIS WRIGHT TREMAINE LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101  
*Counsel for Respondent*

By U.S. Postal Service  
 By Legal Messenger  
 By Facsimile  
 By Email  
*Tel. (206) 622-3150*  
*Fax (206) 757-7700*  
*[paulalehmann@dwt.com](mailto:paulalehmann@dwt.com)*  
*[mikekilleen@dwt.com](mailto:mikekilleen@dwt.com)*

DATED: November 28, 2011, at Seattle, Washington.



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**To:** Jean Fallow  
**Cc:** Ele Hamburger; David Campbell; Carson Glickman-Flora; Paula L. Lehmann; Michael J. Killen  
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TO: Clerk of the Court, Washington State Supreme Court

FROM: Eleanor Hamburger

RE: *Washington State Nurses Association, et al. v. Sacred Heart Medical Center* (No. 86563-9)

Attached for filing with the Court today please find the following:

- (1) Motion for Limited Admission Pursuant to APR 8(b) (Pro Hac Vice), with [Proposed] Order; and
- (2) Amicus Brief of The American Nurses Association in Support of Petitioners.

Thank you.

Eleanor Hamburger

Sirianni Youtz Spoonemore

999 Third Avenue, Suite 3650

Seattle, WA 98104

Tel. (206) 223-0303

Fax (206) 223-0246

[ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

<<Mot. for Limited Admission, Pro Hac Vice, and Prop. Order-112811.pdf>> <<Amicus Brief of American Nurses Assn.-112811.pdf>>

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Sent by:

Jean Fallow

Legal Secretary

Sirianni Youtz Spoonemore

999 Third Avenue, Suite 3650

Seattle, WA 98104

Tel. (206) 223-0303

Fax (206) 223-0246