

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 1032145

**SUPREME COURT
OF STATE OF WASHINGTON**

Laurie A. Englund,
Petitioner,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY
DEPARTMENT,
Respondent.

**PETITIONER'S OPPOSITION TO CLERK'S MOTION
TO STRIKE PETITIONER'S REPLY TO
DEPARTMENT'S ANSWER TO PETITION FOR
JUDICIAL REVIEW**

Laurie A. Englund, Petitioner
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I. INTRODUCTION

Petitioner, Laurie A. Englund, submits now her Opposition to the Clerk's "Motion to Strike" dated September 3, 2024 and signed by Sarah R. Pendleton, Acting Supreme Court Clerk. Ms. Englund has expressly reserved all rights and waived none and adamantly does not consent to and objects to her Reply to Department's Answer to Petition for Judicial Review (aka Judicial Notice and Objections document), which she honorably filed and served on August 30, 2024, being improperly struck as a result of interference by the Clerk of the Court in this case.

This Court has a duty to remain impartial in accordance with due process of law and protect the fundamental rights and liberties of the parties in every case in accordance with the provisions of the Constitution for the united States of America and the Constitution for Washington State (which declares that the Federal Constitution is the Supreme Law of the Land per Article 1, Section 2).

Pursuant to RCW 2.06.030 and RCW 2.04.020, the Washington State Supreme Court is vested with all the power and authority necessary in all matters within its jurisdiction for the prompt and orderly administration of justice according to the rules and principles of common law and the Constitution and the laws of the state.

Importantly, the Washington Administrative Procedures Act (APA), which regulations govern this case, also states “Nothing in this chapter may be held to diminish the constitutional rights of any person.” RCW 34.05.020.

Furthermore, according to the Rules of Appellate Procedure (RAP), the Washington State Supreme Court has the lawful duty and statutory discretion and authority to act in the interest of justice, including waiving or altering any of the provisions of any of the court rules, in order to secure a fair review, and the Court must liberally interpret the rules of the court to promote justice.

See RAP 1.2, 7.3, 12.2, 18.8. Whereas, “Cases and issues will

not be determined on the basis of compliance or noncompliance with the rules” and “The appellate court may waive or alter provisions of any of these rules in order to serve the ends of justice.” RAP 1.2.

One of the most basic elements of the fundamental right of due process of law is the Constitutionally protected interest in the opportunity to be heard, which is especially important for an unrepresented party like Ms. Englund who is not trained in legal document preparation or skilled in expressing arguments succinctly and therefore at a natural disadvantage in this case.

Certainly, it would be inequitable to punish an unrepresented party for lacking the legal skills of a trained lawyer, which is why courts have adopted an equitable practice of holding unrepresented parties to a less strict standard. As an unrepresented party without legal training, Ms. Englund trusts this Court will grant some leniency and her pleadings will be liberally construed in the interest of justice. See *Haines v. Kerner*,

404 U.S. 519, 520 (1972); *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

Ms. Englund prays this Court will intervene to prevent a denial of justice in this case and not unjustly strike, but instead, fairly consider her Judicial Notice and Objections reply document.

II. STATEMENT OF THE CASE

Petitioner, Laurie A. Englund, is striving in good faith to do her due diligence in pursuit of her claim for unemployment benefits, to which she is justly entitled, and to the best of her ability, has been learning as she goes and working hard to meet Court expectations.

Ms. Englund honorably submitted her reply document on August 30, 2024 for the purpose of expressly objecting to and rebutting false statements of Respondent, Employment Security Department (ESD), within the Department's Answer filed on August 15, 2024, and providing judicial notice of the relevant

legal standards and governing authorities which Ms. Englund argues are not being fairly applied in this case.

The Clerk's letter dated September 3, 2024 stated: "In this case, it does not appear that the answer seeks review of issues not raised in the petition for review. Therefore, the reply does not appear to be permitted under the rules. Accordingly, a clerk's motion to strike the reply will be set for consideration without oral argument by a Department of the Court at the same time that the Court considers the pending petition for review and motion for entry of order of default. Any party may file an answer to the motion to strike the reply by **September 10, 2024.**"

In Ms. Englund's understanding, each new utterance of a false statement should reasonably be considered a "new issue" to be addressed promptly with an express objection and rebuttal. Ms. Englund asserts that it is her fundamental due process right protected by the Fifth Amendment of the Constitution for the United States of America and Washington State Constitution,

Article 1, Section 3, to object to and rebut any and all false statements each and every time such is entered into the record. Ms. Englund is striving to prevent any impression of tacit agreement on her part with any false statements made.

Importantly, Ms. Englund is the only party with the first-hand knowledge in the case as a result of the failure to appear or participate whatsoever in the proceedings of Respondent Employer, Bellevue School District (BSD), for which Petitioner is seeking default judgement in her favor.

It is also important to note that Ms. Englund was substantially prejudiced when she was deprived a fair opportunity to clarify and correct the record regarding disputed facts at the lower court as a consequence of the Superior Court improperly transferring the case directly to the Court of Appeals without her consent and over her objections and in clear violation of the statutory standard that cases are only permitted to be transferred for direct review

“such that only issues of law remain for determination.” RCW 34.05.518(1)(b)(ii).

Furthermore, it is Ms. Englund’s understanding that the Court welcomes judicial notice of relevant authorities and legal standards which might aid the Court in a fair review in the interest of justice. For example, the Court invites “copies of statutes and constitutional provisions relevant to the issues presented for review.” RAP 13.4(c)(9). Additionally, per RAP 13.4(e), petitions for review “should comply with the requirements as to form for a brief as provided in rules 10.3, 10.4 and 18.17”; whereas, RAP 10.4(c) states: “If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in the appendix to the brief.” In accordance with RAP 10.4(c), Ms. Englund included material

portions of relevant authorities and legal standards typed out in her reply document for judicial notice.

Ms. Englund seeks a full and fair opportunity to be heard and seek redress of grievances in accordance with due process of law and prays this Court will not strike her honorable Judicial Notice and Objections reply document which reasonably meets the standards for compliance as generally stated in RAP 13.4.

III. ISSUES PRESENTED

Questions for this Court:

May a Clerk of the Washington State Supreme Court, acting on their own initiative, interfere in a case by making a “motion to strike” against an unrepresented petitioner’s honorably filed document rather than remaining neutral and adhering to the restrictions of the court’s adversary system and the due process principle of party presentation?

Should this Court exercise its lawful duty to protect the fundamental rights and liberties of Petitioner, Laurie A. Englund, including her Constitutionally secured rights to due process and redress of grievances, and act upon its statutory discretion and authority in the interest of justice to deny the Clerk's "motion to strike" in order to prevent Ms. Englund from unfairly suffering further substantial prejudice in this case and instead provide her an equitable opportunity to be heard and obtain relief sought?

IV. ARGUMENT

Especially in light of the fact that she is an unrepresented petitioner and thus should be equitably afforded some leniency, Ms. Englund is surprised and baffled at the Clerk of the Court's interference in this case with a "motion to strike" against her Judicial Notice and Objections reply document which she honorably filed in good faith in order to aid the Court in a fair review in the interest of justice.

Ms. Englund has repeatedly asserted on appeal that she has experienced bias in the proceedings and has not received a fair and impartial hearing. The Clerk's "motion to strike" seems yet another example of bias against Ms. Englund in this case which is in violation of the equal protection principle of due process of law.

A. The Clerk's "Motion to Strike" Violates the Court's Adversary System (Party Presentation Principle)

Pursuant to RAP 17.4(a)(1), motions are to be filed (aka presented) by the parties of the case (not court officials).

Upon receiving the Clerk's September 3, 2024 letter, Ms. Englund inquired with the Office of the Clerk of the Court as to what rule or regulation gives a Clerk of the Court the legislated authority to *present* a motion to strike in a case. On September 5, 2024, the Clerk of the Court responded by providing Petitioner RAP 17.2(b) which states: "a Commissioner or Clerk may refer a motion to the judges for determination."

However, in Ms. Englund's observation, RAP 17.2(b) seems to lack provision of authority for a clerk to *present* a new motion, and seems instead to only authorize a clerk to *refer* a motion that was already presented by a party of the case.

According to Webster's Dictionary 1828, definition of PRESENT: "verb transitive [Low Latin proesento; Latin proesens; proe, before, and sum, esse, to be.] To lay before a public body for consideration, as before a legislature, a court of judicature, a corporation, etc.; as, to present a memorial, petition, remonstrance or indictment." Likewise, according to Black's Law Dictionary, Fourth Edition, definition of PRESENT: "v. To lay before judge, magistrate, or governing body for action or consideration; submit as a petition or remonstrance for a decision or settlement to proper authorities. Haynes v. State, 108 Tex.Cr.R. 62, 299 S.W. 234, 235." In contrast, according to Webster's Dictionary 1828, definition of REFER: "verb transitive [Latin refero; re and fero, to bear.] 1. To direct, leave

or deliver over to another person.” (See, <https://webstersdictionary1828.com/Dictionary>).

Thus, it seems to Ms. Englund that there is a subtle but important distinction between the meaning of the words “present” (to file/submit a new motion for consideration) and “refer” (to direct a motion already filed/submitted by a party of the case over to another person).

As with RAP 17.2(b), Ms. Englund could find no evidence of legislated authority given to the Clerk of the Court to *present* motions under RCW 2.32.050 Powers and duties of court clerks.

Regarding the powers and duties of the Clerk of the Supreme Court, SAR 16 also does not seem to provide authority for a Clerk to *present* a motion and, importantly, prohibits a Clerk from “acting as an attorney.” See SAR 16(c). The Clerk’s “motion to strike” seems to be based upon personal legal interpretation of the parties’ documents and personal analysis of matters of law in the case, which Ms. Englund asserts might

reasonably be considered “practicing law” (acting as an attorney) in violation of SAR 16(c).

Upon further investigation regarding the authority of court officials to present a motion in a case, Ms. Englund came across the U.S. Supreme Court case *Greenlaw v. United States*, 554 U.S. 237 (2008) which discusses the role of courts in our adversarial (party presentation) system:

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a pro se litigant’s rights. See *Castro v. United States*, 540 U. S. 375, 381–383 (2003). But as a general rule, “[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.” *Id.*, at 386 (Scalia, J., concurring in part and concurring in judgment). As cogently explained:

“[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.” United

States v. Samuels, 808 F.2d 1298, 1301 (CA8 1987).
(emphasis added)

See also, Washington State Supreme Court case, *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, Wn.3d, 534 P.3d 339, 348 (2023) quoting *Greenlaw v. United States*, 554 U.S. 237, 243, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008).

In light of the above, court officials are clearly meant to remain neutral and not interfere with cases and refrain from taking action against parties, especially against an unrepresented party like Ms. Englund who is naturally disadvantaged due to lack of legal training and in this case who has also been substantially prejudiced in the proceedings in violation of due process of law.

The interference of the Clerk of the Court in this case by a “motion to strike” against Ms. Englund, seemingly without proper legislated authority to present such a motion as discussed above, violates the Court’s adversary system (party presentation principle) and constitutes an abuse of discretion. As such, the Clerk’s “motion to strike” is not properly before this Court in

accordance with the principles of due process of law. Therefore, this Court should deny the Clerk's "motion to strike" and fairly consider Ms. Englund's Judicial Notice and Objections reply document as filed.

B. In the Interest of Justice, this Court Should Not Strike Petitioner's Judicial Notice and Objections Reply Document which was Filed Honorably and in Good Faith and Reasonably Meets General Compliance Standards

Even if the Clerk of the Court did not abuse discretion and violate the court's adversary system (party presentation principle) by making a "motion to strike" against Petitioner's Judicial Notice and Objections reply document as discussed above, Ms. Englund asserts that her reply document, which was filed honorably and in good faith, reasonably meets the standards for compliance as generally stated in RAP 13.4, especially considering the court's duty and authority to liberally construe the rules of appellate procedure and modify as necessary to promote justice pursuant to RAP 1.2, 7.3, 12.2, 18.8.

According to RAP 13.4(d), the vague instruction given is that “A reply to an answer should be limited to addressing only the new issues raised in the answer.” Consequently, Ms. Englund respectfully limited her reply document to only addressing the new issue of false statements raised in the Department’s Answer along with providing judicial notice of relevant authorities and legal standards that should be fairly applied in this case.

As discussed above, Ms. Englund reserves her right to expressly object to and rebut any and all false statements entered into the record at the time of occurrence so as to avoid any impression of tacit agreement with any false statements. Ms. Englund has strived to the best of her ability as an unrepresented party to clarify and correct erroneous presumptions through unrebutted sworn declarations and corroborating evidence, yet false statements continue to be newly made on the record which require objection and rebuttal in every instance.

Importantly, regarding the issue of presumptions, Washington State Supreme Court clearly stated in *In Bradley v. S.L. Savidge, Inc.*, 13 Wn.2d 28, 123 P.2d 780 (1942): "When the presumption is overcome by proper evidence, it ceases to exist and cannot be further considered by the court or jury, or used by counsel in argument."

Consequently, ESD should refrain from making false statements that are based on incorrect presumptions which Ms. Englund has already overcome with un rebutted sworn declarations and corroborating evidence. Until ESD refrains from making false statements on the record, it is Ms. Englund's due process right to expressly object to and rebut on the record any newly made false statement by ESD.

As discussed above, pursuant to RAP 10.4(c), relevant authorities for judicial notice are welcomed by the Court within the text of any document or in an appendix. Ms. Englund has devoted much time and effort towards doing her due diligence in

support of her unemployment benefits claim including striving to the best of her ability as an unrepresented party to provide the Court with as many relevant authorities as possible for each document. In order to overcome any unreasonable suggestion that she has somehow not provided “sufficient” authorities for her case, Ms. Englund worked hard to find and provide additional relevant authorities which she typed out within the reply document, including authorities regarding standards of law to aid this Court in a fair review. This Court should properly take judicial notice of the relevant authorities provided by Ms. Englund in her reply document and properly apply the lawful standards of review in this case.

Therefore, it is Ms. Englund’s understanding that her Judicial Notice and Objections reply document is appropriately compliant with the court rules as generally stated in RAP 13.4 and should be justly considered by this Court.

Furthermore, the rules of appellate procedure are meant to promote flexibility and justice. See RAP 1.2, 7.3, 12.2, 18.8. Likewise, according to RCW 4.36.240, harmless error should be disregarded by the Court, whereas, “The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.”

In order to prevent a denial of justice, this Court should provide some leniency regarding any document submitted honorably and in good faith by an unrepresented party who is already at a significant disadvantage due to lack of legal training. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

Improperly striking the Petitioner’s reply document would unfairly limit Ms. Englund’s equitable opportunity to be heard and to redress grievances, which would further prejudice her in

violation of due process of law. Such a violation of due process of law would constitute an abuse of discretion that could not reasonably be considered to be substantially justified.

Importantly, this Court is duty-bound to protect Ms. Englund's fundamental rights and liberties including that of due process of law and the right to a fair and just proceeding. "Constitutional provisions for the security of person and property are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.'" *Byars v. United States*, 273 U.S.28 (1927), *Boyd v. United States*, 116 U.S. 616, 635 (1886), and *Gouled v. United States*, 255 U.S. 298 (1921).

According to Black's Law Dictionary, Fourth Edition, definition of JUSTICE: "Under constitutional provision guaranteeing right to obtain justice, the "justice" to be administered by courts is not an abstract justice as conceived of by the judge but justice according to law or, as it is phrased in the constitution,

"conformably to the laws". State ex rel. Department of Agriculture v. McCarthy, 238 Wis. 258, 299 N.W. 58, 64."

Ms. Englund respectfully requests and trusts this Court to justly guard her fundamental rights, and liberally construe the rules of appellate procedure and modify as necessary in the interest of justice per RAP 1.2, 7.3, 12.2, 18.8, and not improperly strike her Judicial Notice and Objections reply document which was honorably filed in good faith and reasonably meets the very general standards of compliance under RAP 13.4.

V. CONCLUSION

Petitioner, Laurie A. Englund, prays this Court will exercise its lawful duty and statutory discretion and authority to act in order to protect her fundamental Constitutionally secured rights, and prevent a denial of justice in this case, and not improperly strike Petitioner's Judicial Notice and Objections reply document, but instead, appropriately consider the document as filed.

I, Laurie A. Englund, certify that this document contains 3,541 words (less than 5,000 words) in compliance with RAP 18.17.

I, Laurie A. Englund, swear and declare under penalty of perjury under the laws of Washington State that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted with all rights reserved, none waived and without prejudice.

SIGNED AND DATED this 10th day of September 2024, in Bellevue, King County, Washington State.

A handwritten signature in cursive script that reads "Laurie A. Englund". The signature is written in dark ink and is positioned above a horizontal line.

Laurie A. Englund, Petitioner

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PROOF OF SERVICE

I, Laurie A. Englund, certify that I sent a copy of Petitioner's Opposition to Clerk's Motion to Strike for service on all parties or their counsel of record on the date below as follows:

Court's Copies Delivered Electronically to:
Supreme Court
Temple of Justice
Town Center East, Building 3 – First Floor
243 Israel Road SE
Tumwater, WA 98501

Attorney General's Copies Delivered Electronically to:
Office of Attorney General
Licensing Administrative Law Division
1125 Washington Street SE
PO BOX 40110
Olympia, WA 98504-0110

US Mail Postage Prepaid To:
Bellevue School District
C/O Equifax
PO BOX 283
St. Louis, MO 63166-0283

US Mail Postage Prepaid To:
Commissioner Employment Security Department
Agency Records Center Manager
212 Maple Park
PO BOX 9555
Olympia, WA 98507-9555

I, Laurie A. Englund, swear and declare under penalty of perjury under the laws of Washington State that the foregoing is true and correct to the best of my knowledge.

SIGNED AND DATED this 10th day of September, 2024, in Bellevue, King County, Washington State.


Laurie A. Englund, Petitioner

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Petitioner's Opposition to Clerk's
Motion to Strike

Laurie A. Englund, Petitioner
Case No. 1032145

LAURIE ENGLUND - FILING PRO SE

September 10, 2024 - 4:07 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,214-5
Appellate Court Case Title: Laurie A. Englund v. State of WA, Employment Security Department

The following documents have been uploaded:

- 1032145_Answer_Reply_20240910160636SC607396_0033.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was Case No 1032145 Petitioners Opposition to Clerks Motion to Strike Petitioners Reply to Departments Answer to Petition for Judicial Review.pdf

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