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SUPREME COURT  
STATE OF WASHINGTON  
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No. 103214-5

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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LAURIE ENGLUND,  
Petitioner,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY  
DEPARTMENT,  
Respondent.

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**DEPARTMENT'S ANSWER TO MOTION FOR JUDICIAL  
NOTICE**

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## I. INTRODUCTION

This Court should deny Petitioner Laurie Englund's motion for judicial notice for three reasons. First, it is an improper attempt to supplement Englund's petition for review. Englund already attempted to append financial records for the Office of Administrative Hearings to her reply brief at the Court of Appeals, and in its unpublished opinion the court struck the documentation and refused to consider it. *Englund v. Emp. Sec. Dept.*, No. 85694-4-I, 2024 WL 1856690, at \*3 (Wash. Ct. App. Apr. 29, 2024) (unpublished). If Englund wished to argue that the Court of Appeals erred in refusing to consider this documentation or her arguments, the proper place for Englund to do so was in her petition for review. She declined to do so and the Court should not allow her to supplement her arguments now.

Second, under ER 201, courts are permitted to take judicial notice only of "adjudicative facts." Thus, even if the Court were inclined to consider the documentation Englund offers, it should consider only the facts that are "not subject to reasonable

dispute” and not Englund’s accompanying argument. ER 201(b). Such argument is, again, untimely and improper.

And third, even if the Court considered Englund’s arguments, they are without merit. The Commissioner of the Employment Security Department is statutorily required to use the Office of Administrative Hearings as an appeal tribunal. RCW 50.32.010. The mechanism for compensating the Office of Administrative Hearings for its expenses on behalf of state agencies is similarly dictated by statute. RCW 34.12.160. The mere fact that the Office of Administrative Hearings bills agencies for services rendered does not make its administrative law judges (ALJ) incapable of acting in a fair and impartial manner.

The Court should reject Englund’s motion.

## **II. FACTS RELEVANT TO MOTION**

Englund appealed the Employment Security Department’s denial of her claim for unemployment benefits. *Englund*, 2024 WL 1856690, at \*2. In accordance with chapters 50.32, 34.05,

and 34.12 RCW, as well as chapter 192-04 WAC, the Office of Administrative Hearings (OAH) conducted an administrative hearing. An administrative law judge affirmed the Department's denial of benefits. *Id.* at 2. Englund petitioned for further administrative review, and the Department's Commissioner also affirmed. *Id.* at 3.

Englund sought judicial review. At the Court of Appeals, Englund appended to her reply brief financial records showing that OAH bills the Department for the time OAH spends adjudicating administrative appeals of the Department's decisions. Appendix in Support of Department's Answer (App. 2) at 51-55. Englund argued that, because the Department pays OAH for services it performs for the Department, the ALJ presiding over her case could not be trusted to act in a fair and impartial manner. App. 2 at 21-24.

In its opinion, the Court of Appeals struck all documents Englund appended to her reply brief for failure to comply with RAP 9.11 and declined to consider Englund's related arguments.

*Englund*, 2024 WL 1856690, at \*3. The court then affirmed the Department's denial of benefits. *Id.* at 8.

Englund has petitioned this Court for review of the Court of Appeals opinion. In her petition, she did not assign error to or attempt to seek review of the Court of Appeals ruling striking the documents Englund appended to her reply brief or declining to consider any related arguments. Nearly four months later, Englund now asks this Court to take notice of the same documents the Court of Appeals struck and declined to consider. Motion for Judicial Notice.

### **III. ARGUMENT**

The Court should deny Englund's motion for judicial notice, as it is an improper attempt to supplement her petition for review. Englund previously appended OAH's financial records to her reply brief to the Court of Appeals. App. 2 at 51-55. The court struck the records and declined to consider Englund's accompanying argument. *Englund*, 2024 WL 1856690, at \*3. If Englund believed that decision was incorrect and provides a

basis for this Court's review, the proper place to make that argument was in her petition for review. Englund did not raise this issue in her petition, and her opportunity to do so has long since passed. The Court should deny her untimely and improper attempt to supplement her petition for review.

But even if the Court chooses to take notice of the documentation Englund offers, it should decline to consider her accompanying argument. ER 201 permits courts to take judicial notice at any stage of a proceeding. ER 201(f). However, the court may take judicial notice only of "adjudicative facts" that are either generally known, or that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ER 201(b). OAH's financial records may be a source "whose accuracy cannot reasonably be questioned," but the same cannot be said of Englund's arguments regarding them.

Finally, Englund's arguments simply lack merit. The Department is statutorily required to utilize administrative law judges appointed by OAH. RCW 50.32.010. And OAH is statutorily authorized to bill the Department and other agencies for its services. RCW 34.12.160 Nevertheless, Englund asserts that, because OAH bills the Department, that the judges employed by OAH cannot be trusted to act fairly and impartially. But she cites to no authority to support that an adjudicator cannot act fairly merely because one of the parties is billed for the adjudicator's time.

And Englund fails to identify anything in the ALJ's conduct or order that actually indicates bias. That is because the ALJ presided over Englund's administrative appeal in a fair and impartial manner. Englund simply disagrees with the outcome, which is not evidence of bias.

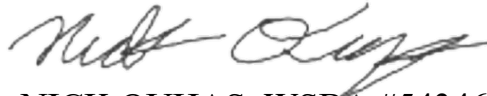
#### **IV. CONCLUSION**

This Court should reject Englund's motion.

I certify that this document contains 932 words, excluding  
the parts of the document exempted from the word count by RAP  
18.17.

RESPECTFULLY SUBMITTED this 24th day of  
October, 2024.

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in dark ink, appearing to read "Nick Quijas", is written over the printed name and title.

NICK QUIJAS, WSBA #54346  
Assistant Attorney General  
Attorney for Respondent



## PROOF OF SERVICE

I, Nick Quijas, certify that I caused to be served a copy of **Department's Answer to Motion for Judicial Notice and Appendix** on all parties or their counsel of record on the date below as follows:

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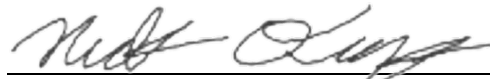
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of October 2024, in Olympia, Washington.



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NICK QUIJAS, WSBA # 54346  
Assistant Attorney General

**AGO/LICENSING AND ADMINISTRATIVE LAW DIV**

**October 24, 2024 - 10:47 AM**

**Transmittal Information**

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**Appellate Court Case Number:** 103,214-5  
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