No. 85694-4

SUPREME COURT
OF STATE OF WASHINGTON

Laurie A. Englund,
Petitioner,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

PETITION FOR JUDICIAL REVIEW BY SUPREME COURT OF WASHINGTON STATE

Re: Decision of the Court of Appeals Terminating Review

Appendix in Support Thereof

Laurie A. Englund, Petitioner
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I. INTRODUCTION OF PETITIONER

Petitioner, Laurie A. Englund, timely petitions for Judicial Review, under the Administrative Procedures Act (APA), Chapter 34.05 RCW, and pursuant to RAP 13.4 (within thirty days of the order of the Court of Appeals on Petitioner's Motion for Reconsideration), by the Washington Supreme Court of the improper decision of the Court of Appeals terminating review of the erroneous final order of Respondent Employment Security Department (ESD) designated in Section II of this petition.

At the time of filing this Petition for Judicial Review, Discretionary Review proceedings are ongoing at the Washington Supreme Court (Case No. 102801-6) with a hearing scheduled for July 9, 2024, regarding the issue of misapplication of RCW 34.05.518 in this case in violation of Ms. Englund's fundamental rights, due process of law, Constitutional provisions, and statutory standards, for which Ms. Englund is

seeking injunctive and declaratory relief, and which is also of importance to the public interest to resolve.

Additionally, pursuant to LCR/CR 55(a), Ms. Englund filed with the Court of Appeals on June 24, 2024, a Motion for Entry of Order of Default for Failure to Appear of Respondent Employer Bellevue School District (BSD) for more than one year since Petitioner's filing and service of her Petition for Judicial Review in King County Superior Court on May 22, 2023, which is currently pending a decision. See Appendix 1-14.

It is Ms. Englund's understanding that the Court of Appeals retains the authority per RAP 7.3 to act in this case and decide upon her Motion for Entry of Order of Default while Ms. Englund also timely preserves her right to petition for redress of grievances by Judicial Review with the Supreme Court, and that the Supreme Court will provide any necessary direction in this regard.

Throughout the proceedings, Ms. Englund has adamantly expressed that she reserves all rights and waives none and seeks proper resolution of the case in accordance with Constitutional provisions and due process of law, which is her fundamental right. Importantly, the Federal Constitution is the Supreme Law of the Land per Washington State Constitution, Article 1, Section 2, and the APA states "Nothing in this chapter may be held to diminish the constitutional rights of any person." RCW 34.05.020.

However, Ms. Englund has suffered and continues to suffer unlawful Constitutional deprivations and violations of her fundamental rights and liberties in this case without relief, despite her best efforts to obtain resolution by exhausting all possible avenues for remedy to date.

As a consequence of the Court's failure to intervene in the interest of justice, Ms. Englund now finds her Constitutionally protected right to petition for redress of grievances chilled, and

her Constitutionally protected due process right of non-discretionary appeal "as a matter of right" stripped, and she is left facing the uncertainty of discretionary review.

Ms. Englund prays this Court will act in order to prevent a denial of justice in this case and grant her the relief sought in Section VI of this petition or any other relief this Court deems proper.

Ms. Englund is an unrepresented party without legal training and trusts this Court will grant some leniency and this pleading will be liberally construed in the interest of justice. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

II. COURT OF APPEALS DECISION TO BE REVIEWED

Petitioner, Laurie A. Englund, objects to and seeks review of the decision of the Court of Appeals dated April 29, 2024, which improperly affirmed the order of Respondent Employment Security Department (ESD), denying Ms. Englund upon

erroneous grounds the unemployment benefits to which she is eligible and justly entitled, as well as the subsequent order of the Court of Appeals dated May 28, 2024, which denied Petitioner's Motion for Reconsideration filed on May 20, 2024, and failed to correct material errors of fact and law contained in the Court's opinion dated April 29, 2024.

Ms. Englund challenges that the decision of the Court of Appeals was inconsistent and in conflict with ESD agency precedent, Washington State Appellate Court precedent, and US Supreme Court precedent. Furthermore, this case involves the deprivation and violation of fundamental rights protected by the Washington State Constitution and the Constitution for the united States of America as well as issues of misapplication of statutory provisions. It is in the interest of justice for the matters of public import in this case to be determined by the Washington Supreme Court.

A copy of the Court of Appeals decision terminating review dated April 29, 2024 is in the Appendix at pages 15-31. A copy of Petitioner's Motion for Reconsideration dated May 20, 2024 is in the Appendix at pages 32-79. A copy of the Court of Appeals order denying Petitioner's Motion for Reconsideration dated May 28, 2024 is in the Appendix at page 80.

III. ISSUES PRESENTED FOR REVIEW

Ms. Englund incorporates herein all of the assignments of errors and issues set forth in her Opening Brief with Appendix filed on October 27, 2023, and her Amended Reply Brief with Appendix filed on February 12, 2024, as well as her Motion for Reconsideration with Appendix filed on May 20, 2024, and adds the following:

1. Whether the Court of Appeals erred in proceeding without proper jurisdiction on the merits of the case rather than expeditiously granting Petitioner default judgement for the failure to appear of Respondent Employer, or remanding the

case back to the Superior Court in accordance with due process of law?

2. Whether the Court of Appeals erred in failing to properly resolve disputed issues and inaccurate findings despite Ms. Englund's best efforts to clarify and correct the record as the only party with first-hand knowledge of the facts surrounding employment separation?
3. Whether the Court of Appeals erred in mischaracterizing, discrediting, and rejecting Ms. Englund's unrebutted sworn statements/declarations/testimony based upon first-hand knowledge and supported by corroborating evidence, while instead affirming ESD's erroneous conclusions based upon speculation, presumption, and hearsay?
4. Whether the Court of Appeals erred in finding that "Englund never articulated any religious objection to the vaccination requirement during her period of employment with the District" despite Ms. Englund's unrebutted sworn statements, hearing testimony under oath, and corroborating email

evidence that she did, in fact, properly notice the Employer Bellevue School District regarding her religious objections to the vaccine policy prior to her separation from employment?

5. Whether the Court of Appeals erred in ignoring Ms. Englund's unrebutted sworn declarations that she had, in fact, requested religious accommodation prior to termination of employment in accordance with OSPI and EEOC guidance for Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) and Constitutional protections for religious freedom in the workplace?
6. Whether the Court of Appeals erred in making a decision inconsistent with due process of law, contrary to Constitutional and statutory provisions, and in conflict with ESD agency precedent, Washington State Appellate Court precedent, and US Supreme Court precedent?

IV. STATEMENT OF THE CASE

Ms. Englund incorporates herein all of the facts previously set forth in her Opening Brief with Appendix filed on October 27, 2023, and her Amended Reply Brief with Appendix filed on February 12, 2024, as well as her Motion for Reconsideration with Appendix filed on May 20, 2024.

Importantly, Ms. Englund is the only party in the case with first-hand knowledge regarding the facts surrounding employment separation and subsequent termination because Respondent Employer Bellevue School District (BSD) has failed to appear whatsoever in the proceedings. See Petitioner's Motion for Entry of Order of Default, Appendix 1-14.

Throughout the proceedings, Ms. Englund has brought to the Court's attention and tried to clarify/correct inaccuracies regarding the facts and evidence of the case as well as gross mischaracterizations of Ms. Englund's testimony and actions. Ms. Englund has made numerous sworn statements under

penalty of perjury regarding the true facts of the case and has strived to the best of her ability to clarify/correct the erroneous findings of ESD and the Court which continue to be repeated.

The following facts, which Ms. Englund discussed at the administrative hearing on February 14, 2023, and in her petitions to the Commissioner of ESD, AR 574-580, 591-614, and in her previous court filings, are unrebutted by the Respondent Employer.

Ms. Englund worked for Bellevue School District (BSD) for more than twenty years as an office manager and had an excellent employee record. In the fall of 2021, BSD unilaterally changed the conditions of "usual work" to those which violated Ms. Englund's Constitutionally protected rights and her sincerely held religious beliefs and moral convictions.

Ms. Englund notified BSD of her religious objections to the new vaccine policy based upon her sincerely held Christian beliefs, and shared her moral convictions including that the vaccine

policy violated the Bible's 10 Commandments, which she testified about at the hearing. AR 45-46.

BSD acknowledged Ms. Englund's sincerely held religious beliefs as a basis of her objections to and moral convictions about the vaccine policy, as corroborated by the BSD email conversation from October 11, 2021, "She [Laurie] stated that her feelings about the vaccine extend beyond religious beliefs, and she shared some personal opinions on mandated vaccines and infringement upon her rights, etc. Laurie shared that she has been feeling 'bullied' and there isn't 'anyone on her side' when it comes to the push to get vaccinated." AR 611-612.

Ms. Englund felt it would violate her sincerely held religious beliefs to submit an "exemption" form detailing all of her private convictions, but in accordance with OSPI and EEOC guidance on Title VII of the Civil Rights Act of 1964, Ms. Englund communicated with her supervisor, the assistant principal, and the HR director of BSD regarding her desire for a reasonable

work accommodation upon religious grounds which would allow her to continue her employment.

Ms. Englund has tried to clarify the apparent misunderstanding regarding the different meanings of "applying/filing for an exemption" (meaning submission of written form with private details about her specific convictions which she felt violated her sincerely held religious beliefs) as compared to "seeking/requesting accommodation" (meaning notifying the Employer of her religious objections to vaccine policy and asking for protection of employment status and reasonable work accommodation based on her sincerely held religious beliefs and Constitutionally protected rights).

BSD reported to ESD that it accommodated at least 3,000 employees with religious objections to the vaccine policy, yet BSD failed to fairly grant a religious accommodation to Ms. Englund for her equally sincere and valid religious objections,

and instead, took discriminatory action against Ms. Englund and ultimately terminated her employment. AR 104.

After employment separation, Ms. Englund continued to try to negotiate a reasonable accommodation in order to return to work. In an effort to save her career, Ms. Englund even submitted a written "exemption" request on December 20, 2021, prior to the expiration of the appeals deadline, which BSD extended multiple times until January 2, 2022. See AR 62-95, 194, 196, 233-234, 239, 241-242.

Ms. Englund also reported these facts to EEOC in her discrimination complaint charges against BSD dated March 5, 2022 and March 8, 2022: "I believe I have been harassed, suspended, discharged, and denied reasonable accommodation for my religion (Christian) and harassed in retaliation for my participation in a protected activity in violation of Title VII of the Civil Rights Act of 1964." (emphasis added). AR 613-614. See also AR 244-245.

Ms. Englund has tried repeatedly to correct the record through unrebutted sworn declarations and corroborating evidence that she did, in fact, properly notice BSD about her religious objections to the vaccine policy and request religious exemption/accommodation from BSD prior to employment separation in accordance with law. Ms. Englund adamantly objects to the perpetuation of false statements to the contrary by those without first-hand knowledge of the matter.

Importantly, employment separation from BSD was "non-disciplinary" in nature, BSD never made any claim of "misconduct" against Ms. Englund nor provided any evidence of "reckless disregard" on the part of Ms. Englund required for such a finding. The incorrect presumption of "misconduct" came from ESD, not the Employer. In fact, BSD has not appeared or participated whatsoever in the proceedings to date despite having the burden of proof in the matter and any previous statements submitted prior to the proceedings by representatives of BSD

without first-hand knowledge is considered hearsay. ALJ Finding of Fact 22, AR 565.

Ms. Englund is honorably seeking an award of the full unemployment benefits to which she is eligible and justly entitled, including back pay with interest.

Ms. Englund has asked repeatedly for an Order for Default Judgement as a consequence of the failure to appear/participate of Respondent Employer Bellevue School District in the administrative or court proceedings to date.

Alternatively, Ms. Englund requests an Order for Remand to the Superior Court, which has original principal jurisdiction over administrative appeals, in order to restore proper due process of law in the case in accordance with Constitutional protections and also provide a fair opportunity for clarification and correction of disputed facts.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Ms. Englund incorporates herein all of the grounds for relief and argument previously discussed in her Opening Brief with Appendix filed on October 27, 2023, and her Amended Reply Brief with Appendix filed on February 12, 2024, as well as her Motion for Reconsideration filed on May 20, 2024.

Ms. Englund has challenged that the Superior Court exceeded its jurisdiction when it improperly transferred the case for direct review in violation of Constitutional protections and due process of law; therefore, the Court of Appeals did not acquire proper jurisdiction to proceed on the merits. Consequently, Ms. Englund questions the validity of the decision of the Court of Appeals on that basis. See *Williamson v. Berry*, 49 U.S. 495 (1850) and *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 305, 971 P.2d 581 (1999) regarding void judgements.

Even if it had proper jurisdiction, the Court of Appeals was duty-bound to correct errors of fact and law, yet failed to resolve the disputed issues of the case. Where there is a mixed question of law and fact, the error of law standard is appropriate. *Brandley v. Emp't Sec. Dep't*, 23 Wn. App 339, 342-343, 595 P2d 565 (1979). Ms. Englund is seeking Judicial Review for material errors that remain unresolved.

According to RAP 13.4(b), the Supreme Court will consider the following in deciding whether to accept a Petition for Review: "(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Especially in consideration of the Court's duty to liberally interpret the rules to promote justice per RAP 1.2(a), Ms. Englund reasonably qualifies for relief as discussed below.

A. The Erroneous Court of Appeals Decision is Inconsistent with ESD Agency Precedent, Washington State Appellate Court Precedent, and US Supreme Court Precedent.

Ms. Englund expects equal treatment and protection under the law, which is her fundamental due process right. Judicial review by the Washington Supreme Court is necessary to rectify the incongruency of the Court of Appeals decision in Ms. Englund's case with other court decisions.

1. The Court of Appeals Decision is in Conflict with Other Case Decisions regarding the Failure to Appear of a Respondent Employer

Ms. Englund's contention throughout the proceedings has been that this case should have been expeditiously decided in her favor at the administrative hearing or by the Superior Court as a result of the default for failure to appear by Respondent Employer BSD which has the burden of proof for a finding of "misconduct" by a preponderance of evidence. See *In re Dow v. Employment*

Security Commissioner, Dec. 2d 948 (2010); *In re Verner v. Employment Security Commissioner*, Dec. 2d 987 (2013).

As a consequence of the failure to appear, all previous statements submitted prior to the proceedings by representatives of BSD without first-hand knowledge is considered hearsay. No finding of fact or conclusion of law can be made upon hearsay evidence alone. *Pappas v. Employment Security Department*, 135 Wn. App. 852, 857, 146 P.3d 1208 (2006).

Thus, BSD is precluded from reaching its burden of proof only with hearsay. Yet, this case has continued for more than one year in violation of clear agency precedent. See *In Re Gardner*, Empl. Sec. Comm'r Dec.2d 1022 (2018):

> "The burden of establishing misconduct must be borne by the party alleging the misconduct which, in this case, is the employer. Misconduct may not be presumed, and it is the employer's burden to prove misconduct by a preponderance of the evidence. In re Verna, Empl. Sec. Comm'r Dec.2d 617 (1980); In re Ash, Empl. Sec. Comm'r Dec.2d 401, (1978); In re Ostrom, Empl. Sec. Comm'r Dec.2d 204 (1976). A preponderance of evidence is that evidence which, when fairly considered, produces the

> stronger impression, has the greater weight, and is the more convincing as to its truth when weighed against the evidence in opposition to it. Yamamoto v. Puget Sound Lumber Co., 84 Wn. 411, 146 P. 861 (1915)... **No one, other than the claimant, was present at the hearing with first-hand knowledge of the circumstances which resulted in claimant's separation from employment. An employer does not meet its burden of proof with only hearsay evidence.** In re Crowley, Empl. Sec. Comm'r Dec. 936 (1972); In re Garrett, Empl. Sec. Comm'r Dec. 393 (1958)... **Because the employer chose not to participate in the hearing and because the employer's only evidence was hearsay, misconduct as defined by RCW 50.04.294 has not been established**." (emphasis added).

Furthermore, Washington State Supreme Court discussed the legal duty of case appearances and the consequence of a party's choice not to appear in *Dlouhy v. Dlouhy*, 55 Wn. 2d 718 (Wash. 1960):

> "...**where one is given notice** of hearing on a motion **affecting substantial rights, he may either submit himself to the court's jurisdiction and attempt to protect his rights, or he may not appear and allow their determination in absentia. The choice is his.** He is no more coerced than he would be in choosing to appear in answer to a summons and complaint. See In re Samuelson, 134 N.J.L. 573, 49 A.2d 479; Canaday v. Superior Court, 49 Del. 456, 119 A.2d 347; 6 C.J.S. 4, § 1 (c) (1)." (emphasis added)

See also *Morin v. Burris*, 160 Wn. 2d 745 (Wash. 2007):

> Those who are served "must in some way appear and acknowledge the jurisdiction of the court after they are served and litigation commences."

BSD's deliberate choice not to appear, answer, or participate whatsoever in case proceedings for more than one year to date constitutes a waiver of rights and default for which Ms. Englund is justly entitled to unemployment benefits. In light of this, Ms. Englund has asked repeatedly for and continues to seek default judgement in her favor. See Appendix 1-14.

2. The Court of Appeals Decision is in Conflict with Other Case Decisions that Evidence Overcomes Presumption

It is baffling to Ms. Englund how a presumption of "misconduct" persists in this case despite her best efforts to correct the record being the only party with first-hand knowledge regarding the circumstances surrounding employment separation, and in light of Ms. Englund's declarations sworn under penalty of perjury and corroborating evidence that she has provided disproving any presumption of "misconduct" and instead showing that she acted

in good faith and with good cause while engaging in the "protected activity" of seeking reasonable work accommodation for her sincerely held religious beliefs and moral convictions.

According to *In Re Young*, Empl. Sec. Comm'r Dec.2d 951 (2010):

> "We do not accept Office of Administrative Hearings' assumptions based on Departmental presumptions. The Administrative Procedure Act requires proof by competent evidence of the truth of statements contained in a Determination Notice. See, e.g., Scheeler v. Department of Employment Security, 122 Wn. App. 484, 93 P.3d 965 (2004)."

Washington State Supreme Court discussed the issue of presumption at length in *In Bradley v. S.L. Savidge, Inc.*, 13 Wn.2d 28, 123 P.2d 780 (1942):

> "We have held so many times that it would seem to need no citation of authority, that this presumption is not evidence, and relates only to a rule of law as to which party shall first go forward and produce evidence to sustain the matter in issue; that it will serve in the place of evidence only until prima facie evidence has been adduced by the opposite party; and that the presumption should never be placed in the scale of evidence. See Scarpelli v. Washington Water Power Co., 63 Wn. 18, 114 P. 870, and cases therein cited... **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." (emphasis added)

Ms. Englund's sworn declarations, unrebutted by Respondent Employer BSD to date and supported by corroborating evidence, stand as truth and fact and sufficiently make a prima facie case that 1) Ms. Englund gave proper notice to BSD prior to employment separation regarding her religious objections to the vaccine policy, 2) Ms. Englund communicated to BSD prior to employment separation about her desire for reasonable work accommodation for her sincerely held religious beliefs and moral convictions, and 3) BSD acknowledged her religious objections and moral convictions as a basis for her concerns and actions.

The evidence which Ms. Englund has provided reasonably overcomes any presumption of "misconduct" and demonstrates that Petitioner is eligible and justly entitled to unemployment benefits.

3. The Court of Appeals Decision is in Conflict with Other Case Decisions regarding the Proper Construal and Application of Employment Security Act Provisions

The improper weighing of evidence of the case violates the spirit and purpose of the Employment Security Act which *shall* be liberally construed for the purpose of protecting unemployed workers and reducing the burden of economic insecurity and suffering caused thereby to a minimum per RCW 50.01.010. See, *Shaw v. ESD*, 46 Wn.App. 610, 731 P.2d 1121 (1987) and *Johnson v. Department of Empl. Sec.*, 112 Wn.2d 172, 179 769 P.2d 305 (1989).

Furthermore, the misapplication of RCW 50.04.294 in this case, is in contrast to case precedent that statutes which might lead to a forfeiture are to be strictly construed. See, *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (Wis. 1941). See also, *Markham Grp., Inc. v. Emp't Sec. Dept*, 148 Wn. App. 555, 561, 200 P.3d 748 (2009).

Surely, the framers of the Employment Security Act never imagined that an employee's good cause actions of engaging in the Constitutionally protected activity of seeking reasonable work accommodation for sincerely held religious beliefs would ever be misconstrued as "misconduct" under RCW 50.04.294. On the contrary, religious objections to violative changes in work policy are listed as a "good cause" reason for employee actions under RCW 50.20.050 and WAC 192-150-140.

Ms. Englund asserts that an employee's Constitutionally protected activity should reasonably be evaluated with consistency across all provisions of the Employment Security Act.

4. The Court of Appeals Decision is in Conflict with Other Case Decisions regarding Religious Freedom Protections in the Workplace

Ms. Englund challenges that the Court of Appeals decision is contrary to long-standing decisions on the issue of protections

for religious freedoms in the workplace. See Memorandum on Religious Liberty Protections, Opening Brief Appendix 11-35.

To qualify for First Amendment protection is simply a matter of whether, "the objector's beliefs are sincerely held and whether they are religious in nature. If those two conditions are met, the objector's beliefs are entitled to First Amendment protection." *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981).

According to *Sherbert v. Verner*, 374 U.S. 398 (1963):

> "To condition the availability of benefits upon this appellant's willingness to violate her sacred religious beliefs substantially burdens her free exercise of religion...The pressure upon her to forego her religious convictions or be barred from benefits is the equivalent of coercing her to violate her free exercise of religion...Moreover, to condition the availability of benefits upon appellant's willingness to violate her religious beliefs has an effect equivalent to the imposition of a fine."

Importantly, according to Elrod v. Burns, 427 U.S. 347, 373 (1976), "The loss of First Amendment freedoms, for even

minimal periods of time, unquestionably constitutes irreparable injury."

Likewise, the Court of Appeals decision is inconsistent with EEOC guidance regarding the statutory provisions of Title VII of the Civil Rights Act of 1964.

According to the EEOC Compliance Manual on Religious Discrimination, Section 12:

> "Title VII requires an employer, once on notice, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement... The accommodation requirement is plainly intended to relieve individuals of the burden between choosing between their jobs and their religious convictions... When requesting accommodation, the employee need not use any 'magic words' such as 'religious accommodation'... A religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs... An adjustment offered by an employer is not a 'reasonable' accommodation if it merely lessens rather than eliminates the conflict between religion and work..." www.eeoc.gov/laws/guidance/section-12-religious-discrimination

EEOC's guidance on Title VII and COVID-19 Vaccinations (Updated 5/28/21) similarly states:

> "**Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation** unless it would pose an undue hardship." (emphasis added) www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

It is Ms. Englund's contention that BSD was required to grant her a reasonable work accommodation in accordance with Title VII of the Civil Rights Act of 1964 and Constitutional protections for religious freedom in the workplace.

The Court of Appeals should have recognized that the failure of the Respondent Employer to accommodate Ms. Englund's sincerely held religious beliefs and moral convictions which resulted in wrongful termination reasonably entitles her to unemployment benefits in accordance with long-standing case precedence for the protections of religious liberty in the workplace.

B. The Court has a Duty to Intervene in the Interest of Justice to Protect Petitioner's Fundamental Rights and Liberties in Accordance with Constitutional Provisions

The Supremacy Clause of the Federal Constitution sets forth: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof...**shall be the supreme Law of the Land, and Judges in every State shall be bound thereby,** any Thing in the Constitution or Law of any State to the contrary notwithstanding." (emphasis added).

"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).

Ms. Englund seeks relief from ongoing deprivation and violation of her fundamental Constitutionally protected rights in this case, including, but not limited to, her right of religious freedom

secured by the First Amendment of the Constitution for the united States of America and Washington State Constitution, Article 1, Section 11; her right of due process of law and equal protection and treatment under the law secured by the Fifth Amendment and Washington State Constitution Article 1, Section 3; and her right of non-discretionary appeal "as a matter of right" secured by Washington State Constitution, Article 1, Section 22. See Constitutional Provisions, Opening Brief Appendix 1-2.

Furthermore, there are issues of unconstitutional misapplication of statutory provisions in this case which are in the public's interest to resolve in order to prevent injustice in similarly situated cases. "[T]he public interest is always furthered by enjoining unconstitutional policies. *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022) ("it is always in the public interest to prevent the violation of a party's constitutional rights.").

VI. CONCLUSION AND RELIEF SOUGHT

Ms. Englund asks that the errors of this case be corrected and her fundamental rights and liberties be properly protected in accordance with law.

Ms. Englund is honorably seeking an award of the full unemployment benefits to which she is eligible and justly entitled, including back pay with interest.

Ms. Englund respectfully requests an Order for Default Judgement in her favor due to the failure to appear of Respondent Employer Bellevue School District to date, or alternatively, an Order for Remand to the Superior Court which would restore proper due process of law in the case and also allow an opportunity for resolution of disputed facts and issues.

Ms. Englund prays this Court will exercise its lawful duty and statutory discretion and authority to intervene in the interest of justice to accept judicial review pursuant to RAP 13.4 for the

reasons discussed above, set aside the erroneous Court of Appeals decision, and provide the relief Ms. Englund seeks or any other relief this Court deems proper.

I, Laurie A. Englund, certify that this document contains 4,874 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 27th day of June, 2024, in Bellevue, King County, Washington State.

Laurie A. Englund

Laurie A. Englund, Petitioner

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PROOF OF SERVICE

I, Laurie A. Englund, certify that I sent a copy of Petition for Judicial Review with Appendix for service on all parties or their counsel of record on the date below as follows:

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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 27th day of June, 2024, in Bellevue, King County, Washington State.

Laurie A. Englund

Laurie A. Englund, Petitioner

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SUPREME COURT
OF STATE OF WASHINGTON

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APPENDIX IN SUPPORT OF

PETITION JUDICIAL FOR REVIEW

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APPENDIX

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COURT OF APPEALS, DIVISION I
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Laurie A. Englund,
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STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

PETITIONER'S MOTION FOR ENTRY OF ORDER OF DEFAULT FOR FAILURE TO APPEAR BY RESPONDENT EMPLOYER BELLEVUE SCHOOL DISTRICT

Appendix in Support Thereof

[Clerk's Action Required]

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I. INTRODUCTION AND RELIEF REQUESTED

Petitioner, Laurie A. Englund, submits now this motion seeking entry of an Order of Default pursuant to LCR/CR 55(a), as a result of the failure to appear/answer by non-moving party of record Respondent Employer, Bellevue School District (BSD), for more than one year since Petitioner's filing and service of her Petition for Judicial Review on May 22, 2023, in accordance with RCW 34.05.542, RCW 34.05.570, and CR 4(d).

Ms. Englund previously sought the Motion for Entry of Order of Default from King County Superior Court on June 20, 2024. See Appendix 1-32. Despite being told by the Clerk of the Superior Court prior to filing that she should file the Motion via the Ex Parte Department of the Superior Court since her case (number 23-209285-6 SEA) was still active for this sort of purpose, Commissioner Henry Judson denied the motion without prejudice on June 21, 2024 because the case was transferred to the Court of Appeals. See Appendix 33-36.

The deprivation of Ms. Englund's fair opportunity to obtain entry of an Order of Default from the Clerk of the Superior Court seems to be yet another prejudicial consequence resulting from Ms. Englund's case being improperly transferred by the Superior Court directly to the Court of Appeals without Ms. Englund's consent, against her will, and over her valid objections. (Petitioner opposed case transfer because unlawful misapplication of the statute RCW 34.05.518 in this case would result in substantial prejudice to Petitioner and violation of Ms. Englund's fundamental due process rights, and importantly, default for the failure to appear of Respondent Employer Bellevue School District should have been expeditiously resolved by the Superior Court without unnecessary delay in accordance with Washington State Constitution, Article 1, Section 10).

Ms. Englund respectfully requests the Court of Appeals grant this Motion for Entry of Order of Default without further delay; or,

alternatively, grant permission for the Superior Court to enter the Order of Default per RAP 7.2.

Ms. Englund is an unrepresented party without legal training and trusts the court will grant some leniency and this motion will be liberally construed in the interest of justice. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

II. SWORN STATEMENT OF FACTS

Laurie A. Englund, HEREBY SWEARS AND DECLARES under penalty of perjury under the laws of Washington State that she is over 18, competent to testify, and has first-hand knowledge of the following facts in support of her Motion for Entry of Order of Default for Failure to Appear by Respondent Employer Bellevue School District:

1. Bellevue School District (BSD) is a party of record and the Respondent Employer in this case, and has failed to appear or answer or participate whatsoever in case proceedings to date

2. On February 22, 2023, the Administrative Law Judge of Washington State's Office of Administrative Hearings made a finding of fact after the telephone hearing on February 14, 2023 (see page 565 of the Agency Record): "The Employer, Bellevue School District, was provided notice of the time, date, and place of the hearing but failed to appear." (emphasis added)

3. On March 24, 2023, Ms. Englund filed by mail a Petition for Review with the Commissioner of Employment Security Department (ESD) pursuant to RCW 34.05.464. According to the Notice to Parties included on the Commissioner's acknowledgement of receipt of the Petition for Review dated March 27, 2023, Bellevue School District had the opportunity to reply to Ms. Englund's petition within fifteen days (no later than April 11, 2023), but did not submit any response. See Appendix 10.

4. On May 22, 2023, within thirty days after the agency's denial of her Petition for Reconsideration (Commissioner's order

dated April 28, 2023, see Appendix 11-12), Ms. Englund timely filed a Petition for Judicial Review in King County Superior Court pursuant to RCW 34.05.570, and the same date served a copy of the petition by mail upon all parties including Bellevue School District pursuant to CR 4(d) and RCW 34.05.542 which states:

> "(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order" and "(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or the other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark" and "(6) For the purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record." (emphasis added)

5. The certified mail receipt for the Petition for Judicial Review dated May 22, 2023 evidences that Ms. Englund properly served Bellevue School District c/o Equifax in

compliance with CR 4(d) and RCW 34.05.542. The return receipt requested postcard shows that Equifax received on behalf of Bellevue School District the copy of the Petition for Judicial Review on May 24, 2023 (signed/stamped by Robert Davidson) See Appendix 13-23.

6. Bellevue School District (or Equifax on its behalf) did not file a Notice of Appearance or any answer to Ms. Englund's Petition for Judicial Review. Therefore, Bellevue School District did not appear pursuant to RCW 4.28.210 Appearance, what constitutes:

> "**A defendant appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his or her** appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him or her." (emphasis added).

7. On July 20, 2023, Ms. Englund filed a Motion to Remain in Superior Court along with a Notice of Hearing per LCR 7 and served all parties per CR 5 including Bellevue School District

(despite its failure to appear). According to CR 5, "No service need be made on parties in default for failure to appear except pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4."

8. Ms. Englund submitted a sworn declaration of Proof of Service which is corroborated by the certified mail receipt evidencing that Ms. Englund sent a copy of the Motion to Remain in Superior Court and the Notice of Hearing to Bellevue School District on July 20, 2023. The return receipt requested postcard shows Equifax received the documents on behalf of Bellevue School District on July 25, 2023 (signed/stamped by Robert Davidson). See Appendix 24-32.

9. Ms. Englund has done her due diligence to serve upon Respondent Employer Bellevue School District **all** of Petitioner's court filings to date (over 25 filings to date for case numbers 23-2-09285-6 SEA, 85694-4, 85861-1), including

every document requesting relief from BSD's default for failure to appear (for example, Petitioner's Opening Brief filed on October 27, 2023, and Petitioner's Reply Brief filed on February 12, 2024, as well as Discretionary Review filings). Each pleading/motion/paper submitted by Petitioner since her May 24, 2023 Petition for Judicial Review has been accompanied by a sworn declaration of Proof of Service, for which Ms. Englund has corroborating certified mail receipts and return receipt requested postcards evidencing completion of service of process upon Bellevue School District (available upon request). Whereas:

> Black's Law Dictionary, Fourth Edition, Definition of SERVICE OF PROCESS: "The service of writs, summonses, rules, etc., signifies the delivering to or leaving them with the party to whom or with whom they ought to be delivered or left; **and, when they are so delivered, they are then said to have been served**." (emphasis added)

10. The above sworn facts regarding the failure to appear by Respondent Employer Bellevue School District **are undisputed**.

III. STATEMENT OF ISSUES/ARGUMENT

As evidenced above, Respondent Employer Bellevue School District has been provided by Ms. England proper notice (service of process) of all case filings and has had substantial opportunity to participate in the proceedings, but has chosen not to appear in the administrative or court proceedings to date.

Washington State Supreme Court discussed the voluntary nature of case appearances and the consequence of a party's choice not to appear in *Dlouhy v. Dlouhy*, 55 Wn. 2d 718 (Wash. 1960):

> "...**where one is given notice** of hearing on a motion **affecting substantial rights, he may either submit himself to the court's jurisdiction and attempt to protect his rights, or he may not appear and allow their determination in absentia. The choice is his.** He is no more coerced than he would be in choosing to appear in answer to a summons and complaint. See In re Samuelson, 134 N.J.L. 573, 49 A.2d 479; Canaday v. Superior Court, 49 Del. 456, 119 A.2d 347; 6 C.J.S. 4, § 1 (c) (1)." (emphasis added)

See also *Morin v. Burris*, 160 Wn. 2d 745 (Wash. 2007).

Bellevue School District's choice not to appear, answer, or participate whatsoever in case proceedings constitutes a waiver of rights and default. Whereas:

> Black's Law Dictionary, Fourth Edition, Definition of WAIVER: "The intentional or voluntary relinquishment of a known right, Lehigh Val. R. Co. v Ins. Co., 172 F. 364, 97 C.C.A. 62; Vennillion v. Prudential Ins. Co. of America, 230 Mo.App. 993, 93 S.W.2d 45, 51; or such conduct as warrants an inference of the relinquishment of such right, Rand v. Morse, C.C.A. Mo., 289 F. 339, 344; Dexter Yarn Co. v. American Fabrics Co., 102 Conn. 529, 129 A. 527, 537; Gibbs v. Bergh, 51 S.D. 432, 214 N.W. 838, 841."

> Black's Law Dictionary, Fourth Edition, Definition of DEFAULT: "By its derivation, a failure. Meadows v. Continental Assur. Co., C.C.A.Tex., 89 F. 2d 256. An omission of that which ought to be done. Town of Milton v. Bruso, 111 Vt. 82, 10 A. 2d 203, 205. Specifically, the omission or failure to perform a legal duty. Easterwood v. Willingham, Tex.Civ.App., 47 S.W.2d 393, 395... In Practice Omission; neglect or failure of any party to take step required of him in progress of cause. Indiana State Board of Medical Registration and Examination v. Pickard, 93 Ind.App. 171, 177 N.E. 870, 872. **When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to make default,** McCabe v. Tom, 35 Ohio App. 73, 171 N.E. 868, 869, and the judgment entered in the former case is technically called a "judgment by default." 3 Bl.Comm. 396; 1 Tidd, Pr. 562." (emphasis added)

IV. EVIDENCE RELIED UPON

Pursuant to LCR/CR 55(a), Ms. Englund has provided along with this motion supporting documentation evidencing proof of service upon Respondent Employer Bellevue School District. See Appendix 1-32.

V. CONCLUSION

WHEREFORE, Petitioner, Laurie A. Englund, respectfully requests the Court of Appeals enter an Order of Default for the failure to appear by Respondent Employer, Bellevue School District; or, alternatively, grant permission for the Superior Court to enter the Order of Default per RAP 7.2.

I, Laurie A. Englund, certify that this document contains 2,045 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 fore going 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 24th day of June, 2024, in Bellevue, King County, Washington State.

Laurie A. Englund

Laurie A. Englund, Petitioner

1831 127th Ave SE
Bellevue, Washington 98005
425-442-9817
Lauriecnglund@earthlink.net

PROOF OF SERVICE

I, Laurie A. Englund, certify that I sent a copy of Motion for Entry of Order of Default and Appendix for service on all parties or their counsel of record on the date below as follows:

Court's Copies Delivered Electronically to:
Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101

Attorney General's Copies Delivered Electronically to:
Office of Attorney General
Licensing Administrative Law Division
1125 Washington Street SE
POBOX 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 24th day of June, 2024, in Bellevue, King County, Washington State.

Laurie A. Englund

Laurie A. Englund, Petitioner

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FILED
4/29/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LAURIE A. ENGLUND,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

No. 85694-4-I

DIVISION ONE

UNPUBLISHED OPINION

BIRK, J. — Laurie Englund challenges the decision of the commissioner (Commissioner) of the Employment Security Department (ESD) denying her unemployment benefits. Englund asserts that the Commissioner's decision was not supported by substantial evidence, arguing her refusal to comply with the Bellevue School District's (District) COVID-19 vaccination requirement did not fall within the statutory definition of "misconduct" for purposes of unemployment benefits. We disagree, and affirm.

I

In January 2020, the first reported cases of COVID-19 were confirmed in Washington State. The number of cases quickly grew and by the end of the month, both the World Health Organization and the United States Health and Human Services Secretary had declared a public health emergency. Gonzales v. Inslee, 2 Wn.3d 280, 286, 535 P.3d 864 (2023), petition for cert. filed, No. 23-935 (U.S. Feb. 23, 2024). As COVID-19 spread, Governor Jay Inslee declared a state of

emergency and issued multiple proclamations aimed at slowing the spread of the disease. Id. Despite these efforts, COVID-19 took a heavy toll, claiming the lives of tens of thousands of people in Washington. Sehmel v. Shah, 23 Wn. App. 2d 182, 194, 514 P.3d 1238 (2022).

By the start of 2021, multiple pharmaceutical companies had developed vaccines for COVID-19 that were safe and effective in reducing infection and serious disease. Proclamation by Governor Jay Inslee, No. 21-14.2, at 2 (Wash. Sept. 27, 2021), https://governor.wa.gov/sites/default/files/proclamations/21-14.2%20-%20COVID-19%20Vax%20Washington%20Amendment%20%28tmp%29.pdf [https://perma.cc/5LJ7-LPZH]. By April 15, 2021, COVID-19 vaccinations were available to everyone over the age of 16 free of charge. Id. Widespread COVID-19 vaccinations became "the primary means we have as a state to protect our health care system, to avoid the return of stringent public health measures, and to put the pandemic behind us." Id.

On August 18, 2021, Governor Inslee announced a directive requiring all employees working for K-12 schools to be vaccinated or obtain a religious or medical exemption by October 18, 2021.[1] Proclamation 21-14.1 stated that any school employee who did not become vaccinated or obtain a valid exemption by October 18, 2021, would be prohibited from engaging in work for the operator of any education setting. Proclamation by Governor Jay Inslee, No. 21-14.1, at 4-5 (Wash. Aug. 20, 2021), https://governor.wa.gov/sites/default/files/proclamations/

[1] The governor did not issue any proclamations on August 18, 2021. We presume the announcement pertained to the governor's proclamation issued on August 20, 2021.

21-14.1%20-%20COVID-19%20Vax%20Washington%20Amendment.pdf [https://perma.cc/XVZ9-S3MN]. The proclamation further stated that all operators of educational settings

> [m]ust, to the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, document that the request for an accommodation has been made and include a statement in the document explaining the way in which the requirements of this order conflict with the sincerely held religious belief, practice, or observance of the individual.

Id. at 5. Finally, the proclamation imposed criminal penalties for any violation of its terms. Id. at 13.

Englund was formerly employed as an office manager at Woodridge Elementary School in the Bellevue School District. On August 19, 2021, the District sent out an e-mail to staff informing them about Governor Inslee's directive and warning them that " '[e]mployees who do not provide proof of vaccination or a medical or religious exemption will be subject to nondisciplinary dismissal from employment for failing to meet the qualifications of the job.' " Englund's union agreed to the vaccination requirements and entered a memorandum of understanding (MOU) outlining the verification and exemption processes. Englund repeatedly expressed her disagreement with the requirements and told the District that she thought their reminder e-mails constituted "harassment."

On September 27, 2021, Governor Inslee issued Proclamation 21-14.2, updating the requirements from Proclamation 21-14.1. As did the prior proclamation, Proclamation 21-14.2 prohibited any worker from engaging in work in an educational setting after October 18, 2021 if they had not either been

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vaccinated or received a medical or religious accommodation. Proclamation 21-14.2 at 4. That same day, the District sent another e-mail to all employees who had not yet provided proof of vaccination or requested an exemption, including Englund. This e-mail reminded those employees of the October 18 deadline and stated, in bold print, "[e]mployees who do not provide proof of vaccination or a medical or religious exemption will not be permitted to perform any duties and may be subject to dismissal from employment for failing to meet this condition of employment." The District's assistant superintendent of human resources sent another letter to Englund, notifying her that if she did not contact human resources by October 18, the District would begin the process of terminating her employment. Englund responded by claiming that the letter constituted "wrongful threats and intimidation" and that the directive was "illegal."

By October 18, Englund had neither submitted proof of vaccination nor requested a medical or religious exemption. The District terminated Englunds employment and notified her that she was prohibited from reporting for work as of October 19, 2021. On December 20, 2021, Englund sent a document to the District entitled "Statement of Declination of COVID-19 Vaccine Product (Claim of Religious Exemption)." In it, she claimed a religious exemption from the COVID-19 vaccines.

Englund applied for unemployment benefits with the ESD. In a written response to Englund's claim provided to ESD by February 9, 2022, the District reported that its vaccine policy was implemented pursuant to Governor Inslee's mandate, and explained, "we offered both religious and medical exemption," but

Englund "did not apply for one." On February 10, 2022, ESD issued a determination letter denying benefits on the basis that Englund was discharged for misconduct. Englund filed an appeal and submitted hundreds of pages of documents on her behalf. The Office of Administrative Hearings conducted a hearing on February 14, 2023, at which the District did not appear. Following the hearing, the Administrative Law Judge (ALJ) concluded that Englund had been discharged due to a willful or wanton disregard of the rights, title, and interests of the Employer and was therefore disqualified from receiving benefits.

Englund subsequently filed a petition for review. The ESD Commissioner affirmed the order and adopted the ALJ's findings of fact and conclusions of law in full. Englund filed for reconsideration, which the ESD Commissioner denied. Englund then appealed to superior court. The superior court certified the matter to this court for review.

II

The State moves to strike Englund's amended reply brief for failing to comply with the commissioner's order that she refile her brief "without attaching documents that are not part of the record, particularly a declaration and argument addressing the merits of the case." RAP 10.7 provides this court with the discretion to strike an improper brief, or to accept the brief without consideration of any improper argument. In re Adoption of R.L.M., 138 Wn. App. 276, 283, 156 P.3d 940 (2007). We decline to strike Englund's reply brief in its entirety. However, we strike all documents included in the appendix to the reply brief, for Englund's failure

to comply with RAP 9.11.[2] Any argument pertaining to those documents contained in the reply brief has not been considered by this court in deciding this matter.

III

Our review of a decision issued by the ESD Commissioner is governed by the Administrative Procedure Act (APA), chapter 34.05 RCW. RCW 34.05.570; RCW 50.32.120. Both the superior court and this court sit in the same position as an appellate court. Darkenwald v. Emp't Sec. Dep't, 183 Wn.2d 237, 244, 350 P.3d 647 (2015). We review the decision of the Commissioner rather than the ALJ, except to the extent that the Commissioner adopted the ALJ's findings and conclusions. Id.

"We consider a Commissioner's decision to be prima facie correct and the burden of demonstrating the invalidity of agency action is on the party asserting invalidity." Smith v. Emp't Sec. Dep't, 155 Wn. App. 24, 32, 226 P.3d 263 (2010) (quoting RCW 34.05.570(1)(a) and citing Anderson v. Emp't Sec. Dep't, 135 Wn. App. 887, 893, 146 P.3d 475 (2006)). A decision is invalid if it is based on an error of law, if substantial evidence does not support the decision, or if it was arbitrary and capricious. Smith, 155 Wn. App. at 32 (citing RCW 34.05.570(3)(d), (e), (i)).

A

Englund initially asserts that this court lacks jurisdiction over this matter because it was not fully adjudicated in superior court. We disagree.

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[2] This court may accept additional evidence on appeal when the proponent of the evidence sets out the six requirements for supplementation of the record under RAP 9.11. Englund did not address any of the six requirements before attaching the appendix to her reply brief.

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"An appeal from a final order of an administrative agency invokes the appellate, rather than general, jurisdiction of the superior court." Biomed Comm, Inc. v. Dep't of Health Bd. of Pharmacy, 146 Wn. App. 929, 933, 193 P.3d 1093 (2008) (citing Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 555, 958 P.2d 962 (1998)). When a superior court is acting in its appellate capacity, the confines of its jurisdiction are dictated by statute. Id.; see also Const. art. IV, § 6 (Superior courts "shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law.").

In appeals from an administrative agency, the court's jurisdiction is set by the APA. RCW 34.05.518(1)[3] states that a final decision of an administrative agency may be reviewed directly by the court of appeals if the superior court finds that

> (b) One or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:
>
> > (i) The judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or
> >
> > (ii) The superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562, such that only issues of law remain for determination.

Englund separately filed a motion for discretionary review of the trial court's order certifying this matter to this court. This court's commissioner denied the

[3] Effective Jun 6, 2024, RCW 34.05.518(1)(b) will be renumbered as RCW 34.05.518(1)(a)(ii).

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motion, ruling that Englund had failed to demonstrate error, as required for discretionary review under RAP 2.3(b), because the superior court made all of the requisite findings in its order certifying the case to this court. We denied Englund's motion to modify the commissioner's ruling. We decline to reconsider that ruling in this case.

B

Englund next asserts that she was entitled to a default judgment because the Bellevue School District did not participate in the administrative hearing. We disagree.

Under the APA, the presiding officer in an administrative hearing "may serve upon all parties a default" order should one of the interested parties decline to appear at the hearing. RCW 34.05.440(2) (emphasis added). However, nothing in the Act requires the presiding officer to do so. Here, the presiding officer declined to issue a default order because Englund was the party who challenged the denial of benefits and she was present at the hearing. The presiding officer did not abuse their discretion in declining to issue a default order.

C

"Under the Employment Security Act, Title 50 RCW, a discharged worker who commits 'misconduct connected with his or her work' cannot receive unemployment compensation benefits." Smith, 155 Wn. App. at 34 (quoting RCW 50.20.066(1)). Whether an employee's actions constitute misconduct is a mixed question of law and fact. Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 402-03, 858 P.2d 494 (1993). We review questions of law de novo, giving substantial weight

to an agency's interpretation of the rules and statutes it administers. Everett Concrete Prods., Inc. v. Dep't of Lab. & Indus., 109 Wn.2d 819, 823, 748 P.2d 1112 (1988). We review findings of fact for substantial evidence, which is evidence that would persuade a reasonable person of the truth of the matter. King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 142 Wn.2d 543, 553, 14 P.3d 133 (2000). In reviewing whether the Commissioner's findings are supported by the sufficiency of the evidence, we review the entire record, not merely the exhibits offered by one of the parties. See Andrew v. King County, 21 Wn. App. 566, 575, 586 P.2d 509 (1978). We construe the evidence in favor of the party who prevailed in the administrative proceeding, in this case, the employer. Shimmick Constr. Co., Inc. v. Dep't of Lab. & Indus., 12 Wn. App. 2d 770, 778, 460 P.3d 192 (2020).

1

Englund asserts that the Commissioner's findings of misconduct were not supported by substantial evidence. She argues that the Commissioner's findings were based entirely on hearsay submitted by the District, and the evidence she submitted demonstrates that she did not commit misconduct. We disagree.

Pursuant to RCW 50.04.294(1)(a), an employee commits misconduct if he or she has engaged in "willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee." Subsection (2) of the statute lists some examples of actions that constitute "willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee," such as:

> (a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

. . . .

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule.

RCW 50.04.294(2). Misconduct does not include "good faith errors in judgment or discretion." RCW 50.04.294(3)(c).

In her brief, Englund assigns error to findings of fact 1, 9, 10, 12, 15, 18, 24, and 25. Her assignments of error are properly directed to the Commissioner's decision, rather than that of the ALJ. However, all of these assignments of error lack merit.

Findings of fact 1[4] and 12[5] are merely summaries of documents that were entered as evidence. Both findings accurately summarize the exhibits to which they pertain. Englund submitted those exhibits herself and is precluded from

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[4] Finding of fact 1 reads,

> On February 10, 2022, the Employment Security Department (the Department) issued a written Determination Letter that denied the Claimant unemployment benefits beginning October 17, 2021, on the basis that the Claimant was discharged (or, fired) for misconduct. The Claimant is the Appellant in this matter and filed an appeal on February 28, 2022.

[5] Finding of fact 12 reads,

> In a letter dated October 19, 2021, the Employer notified the Claimant that she was prohibited from reporting for work beginning October 19, 2021, and that she was being recommended for termination. This was because the Claimant had not provided proof of COVID[-19] vaccination to the Employer by October 18, 2021, nor had she obtained a medical or religious exemption by October 18, 2021. This letter also notified the Claimant that if she "should agree to become fully vaccinated by November 19, 2021, the District would be willing to work with [the Claimant] to create a plan that would maintain [the Claimant's] position with the District." (Alterations in original.)

challenging them on appeal. See e.g. Shanlian v. Faulk, 68 Wn. App. 320, 329, 843 P.2d 535 (1992) (party cannot object to evidence she submitted).

Findings of fact 24[6] and 25[7] are both credibility findings. We do not review a fact finder's determinations of credibility. Affordable Cabs, Inc v Dep't of Emp't Sec., 124 Wn. App. 361, 367, 101 P.3d 440 (2004).

The remaining findings of fact, 9, 10, 15, and 18, all concern the willfulness of Englund's failure to adhere to employer policy. These read as follows:

> The Claimant did not provide proof of COVID[-19] vaccination to the Employer by October 18, 2021. In addition, the Claimant did not follow the process to request a medical or religious exemption by October 18, 2021. The Claimant had not obtained a medical or religious exemption by October 18, 2021.

Finding of fact 9.

> The Claimant could have filed a religious or medical exemption by October 18, 2021, but chose not to do so.

Finding of fact 10.

> The Claimant chose not to comply with the vaccination requirements. The Claimant chose not to comply with the vaccination requirements agreed to by her union as a condition of continued employment.

Finding of fact 15.

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[6] Finding of fact 24 reads, "The Claimant and her representative appeared to conflate several concepts, particularly in relation to letters and other communications from the Department."

[7] Finding of fact 25 reads,

> Some of the Claimant's testimony appeared to conflict with, and was logically inconsistent with, documents she provided and that were admitted into the record for this hearing. These include, but are not limited to, contemporaneous records between the Claimant and the Employer as well as the MOU between the Claimant's union and the Employer regarding COVID[-19] vaccine requirements.

> The Claimant chose not to file a medical or religious exemption before the job separation occurred.

Finding of fact 18.

These findings are supported by the nonhearsay evidence presented by Englund herself. Englund submitted e-mails that demonstrate the District notified Englund on multiple occasions that all employees were required to be vaccinated or to apply for a medical or religious exemption by October 19, 2021, or else their employment would be terminated. Englund also submitted the MOU between the District and the Service Employees International Union 925, which states that

> An employee who has a sincerely held religious belief that prevents them from being vaccinated against COVID-19 may request an accommodation by notifying Human Resources. The employee must meet with Human resources or submit the form to actively initiate the process. The employee must provide all information reasonably needed to evaluate the request.

Rather than providing proof of vaccination or applying for an exemption as both her employer and union directed, Englund repeatedly accused the District of harassment and stated that she would not be sharing any information in response to "HR's vaccine survey." Englund testified at the hearing that she did not provide proof of COVID-19 vaccination to the District, nor did she file for any kind of exemption before she was terminated. Under the APA, hearsay is admissible. RCW 34.05.452(1). But a finding may not be based exclusively on evidence that would be inadmissible under the rules of evidence. RCW 34.05.461(4). Here, Englund presented nonhearsay evidence that supports the challenged findings. The Commissioner's findings that Englund chose not to comply with the vaccination requirement are supported by substantial evidence.

Englund nevertheless asserts that the District was aware of her religious objections and cites to an e-mail contained in the administrative record. This e-mail, drafted by the assistant principal at Woodridge Elementary, states that Englund "shared that she has no plans to get the vaccination nor has she applied for a religious exemption. She stated her feelings about the vaccine extend beyond religious beliefs, and she shared some personal opinions on mandated vaccines and infringement upon her rights, etc." However, this court does not re-weigh the evidence presented to ESD. Construing this e-mail in the light most favorable to the District as we must, this brief allusion to religion did not put the District on notice that Englund intended to claim a religious exemption. More importantly, this e-mail does not demonstrate that Englund ever submitted a written request for a religious exemption, which her employer policy, union agreement, and state law all required her to do. Englund thus fails to satisfy her burden to show that the Commissioner's findings of fact were not supported by sufficient evidence.

2

Englund also assigns error to conclusions of law 16, 17, 18, and 19. Those conclusions read as follows:

> 16. Here, the Employer discharged the Claimant for failure to comply with COVID-19 vaccination requirements. The COVID-19 vaccination requirements were a reasonable company rule. The Employer allowed sufficient time to comply before the adverse employment action occurred, and the requirements were reasonably connected to promoting a safe and productive workplace and educational environment. Further, the Claimant's union agreed to the vaccination requirements, and the MOU between the Claimant's union and the Employer recognized that "An executive order in the

state of Washington requires Employees to have a COVID[-19] vaccine as a condition of employrnent." See Exhibits 458-461.

17. The Claimant was aware of the COVID-19 vaccination requirements and chose not to comply with these requirements. The Cla[i]mant was also aware that failure to comply with these requirements would result in the Employer ending her employment. The Claimant chose not to comply with the vaccination requirements agreed to by her union as a condition of continued employment. The undersigned notes that if the Claimant was opposed to getting vaccinated, the Claimant could have filed a religious or medical exemption by October 18, 2021. However, the Claimant chose not to do so.

18. Therefore, the Claimant was discharged due to a willful or wanton disregard of the rights, title, and interests of the Employer or a fellow employee as defined in RCW 50.04.294(1)(a), and is subject to disqualification for misconduct pursuant to RCW 50.20.066(1).

19. Benefits will be denied for the period beginning October 17, 2021, and thereafter for ten calendar weeks and until the Claimant has obtained bona fide work in covered employment and earned wages in that employment equal to ten times her weekly benefit amount.

Englund was notified about the vaccination policy two months before the final deadline of October 18, 2021. Finding of fact 6. She did not provide proof of COVID-19 vaccination by October 18, 2021, nor did she apply for an exemption, even though she had the opportunity to. Findings of fact 9-10, 13, 15. The District terminated Englund's employment as of October 18, 2021, due to her failure to adhere to the mandatory vaccination policy. Finding of fact 14.

As outlined above, the Commissioner's findings of fact were all supported by substantial evidence. Those findings demonstrate that Englund violated an employer rule of which Englund was aware. As such, the Commissioner's conclusion that Englund was discharged due to willful or wanton disregard of the rights, title, and interests of the employer and therefore disqualified from receiving unemployment benefits was supported by the evidence.

Englund nevertheless asserts that the vaccination policy was not a reasonable rule and she could not have committed misconduct by violating it.[8] This argument is meritless. The District's vaccination policy was mandated by the governor's proclamation and agreed to by Englund's union. It was therefore reasonable. See WAC 192-150-210(4) ("A company rule is reasonable if it is related to your job duties, is a normal business requirement or practice for your occupation or industry, or is required by law or regulation.") (emphasis added).

3

Englund also asserts that the Commissioner's decision was arbitrary and capricious. An administrative decision is arbitrary and capricious if it is " 'willful and unreasoning and taken without regard to the attending facts or circumstances.' " Kenmore MHP LLC v. City of Kenmore, 1 Wn.3d 513, 521, 528 P.3d 815 (2023) (quoting Whidbey Envtl Action Network v. Growth Mgmt. Hr'gs Bd., 14 Wn. App. 2d 514, 526, 471 P.3d 960 (2020)). Englund contends that the Commissioner violated this standard when it denied her benefits "in contrast to long standing case precedence of similarly situated claimants with sincerely held religious beliefs and moral convictions."

Even if the ESD has any "long standing precedent" that would apply in this matter (a proposition for which Englund presents neither evidence nor authority), this argument necessarily fails because Englund never articulated any religious

[8] Englund also asserts that she had "good cause" to violate the policy and is entitled to benefits under RCW 50.20.050(2)(b)(x) and WAC 192-150-140(2)(b). This statute and corresponding administrative rule concern employees who leave their employment voluntarily. Because Englund's employment was terminated, neither applies to her.

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objection to the vaccination requirement during her period of employment with the District. According to the employer, had Englund actually requested an exemption, her employment likely would not have been terminated. But Englund did not inform the District that she had a sincere religious objection to vaccination until well after her final day of employment. It follows that at the time of the termination for which Englund's eligibility for benefits is under review, she was in violation of a reasonable employer rule. The Commissioner's decision was not arbitrary and capricious.

D

Beyond these assignments of error, Englund's briefing presents arguments beyond the scope of any issues before the ESD (such as whether her employer breached a contract with her or engaged in improper acts in the months after the separation date at issue, October 19, 2021), and arguments directed to constitutional and other statutory considerations (such as Englund's "right to religious freedom protected by the First Amendment" and her "due process rights" protected by the "Fifth Amendment"). We have reviewed Englund's additional arguments, but she fails to support them with competent legal authority, or in many cases with any legal authority. This court does not address arguments inadequately supported with legal authority and except as discussed in this opinion, we decline to reach Englund's unsupported arguments.

IV

The Commissioner's findings of fact are supported by substantial evidence in the record and those findings support the conclusions of law. Englund fails to

demonstrate that the Commissioner's decision was incorrect in any way. We affirm the order denying Englund unemployment benefits.

Becker, J.

WE CONCUR:

Cox, J.

Hazelrigg, ACJ

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No. 85694-4

COURT OF APPEALS, DIVISION I
OF STATE OF WASHINGTON

Laurie A. Englund,
Petitioner,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

MOTION FOR RECONSIDERATION
Re: Opinion of Court of Appeals dated April 29, 2024

Appendix in Support Thereof

Laurie A. Englund, Petitioner
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I. INTRODUCTION/IDENTITY OF MOVING PARTY

Petitioner, Laurie A. Englund, has petitioned for judicial review under the Washington Administrative Procedures Act (APA), Chapter 34.05 RCW, and timely submits now this Motion for Reconsideration seeking the relief requested in Section II of this document.

Ms. Englund has expressly reserved all rights and waived none and does not consent to and objects to any deprivation or violation of her fundamental rights and liberties secured by the Constitution for the united States of America which is the Supreme Law of the Land per Washington State Constitution Article 1, Section 2. The Supremacy Clause of the Federal Constitution sets forth: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof... **shall be the supreme Law of the Land, and Judges in every State shall be bound thereby,** any Thing in the Constitution or Law of any State to the contrary notwithstanding." (emphasis added).

Importantly, the APA also states "Nothing in this chapter may be held to diminish the constitutional tights of any person." RCW 34.05.020.

However, throughout these proceedings Ms. Englund has suffered and continues to suffer unlawful Constitutional violations and deprivation of her fimdamental rights and liberties without relief, despite her best effiorts to obtain resolution by exhausting all possible avenues for remedy to date.

Ms. Englund is an unrepresented party without legal training and trusts this Court will grant some leniency and this pleading will be liberally construed in the interest of justice. *Haines v. Kerner*, 404 U.S. 519, 520(1972).

II. STATEMENT OF RELIEF SOUGHT

Petitioner, Laurie A. Englund, objects to the opinion of the Court of Appeals dated April 29, 2024, which improperly affirmed the order of Respondent, Employment Security Department (ESD),

denying Ms. Englund unemployment benefits upon erroneous grounds.

Pursuant to RAP 12.4, Ms. Englund respectfully requests this Court reconsider the April 29, 2024 decision of judges I. Birk, J. Chung and C, Haaelrigg in order to correct material errors of fact and law contained in the opinion and prevent a denial of justice in this case.

Ms. Englund prays this Court will grant her relief from ongoing deprivation and violation of her fundamental Constitutionally protected rights in this case, including, but not limited to, her right of religious freedom secured by the First Amendment of the Constitution for the united States of America and Washington State Constitution, Article I, Section 11; her right of due process of law and equal protection and treatment under the law secured by the Fifth Amendment and Washington State Constitution Article I, Section 3; and her right of non-discretionary appeal "as

a matter of right" secured by Washington State Constitution, Article 1, Section 22.

Furthermore, there are issues of unconstitutional misapplication of statutory provisions in this case which are in the public's interest to resolve in order to prevent injustice in similarly situated cases.

Ms. Englund is honorably seeking an award of the full unemployment benefits to which she is eligible and justly entitled, including back pay with interest. Ms. Englund has asked the Court for an Order for Default Judgement as a consequence of the failure to appear/participate of Respondent Employer (Bellevue School District) in the proceedings to date, or alternatively, an Order for Remand to the Superior Court, which has original principal jurisdiction over administrative appeals, in order to restore proper due process of law in the case in accordance with Constitutional protections and also provide a fair opportunity for clarification and correction of disputed facts.

Ms. Englund trusts this Court to intervene in the interest of justice and set aside the erroneous April 29, 2024 decision and grant the relief sought or any other relief this Court deems proper.

A copy of the Court of Appeals' opinion is attached for reference. *See*, Appendix pages 1-17.

III. FACTS RELEVENTTO MOTION

Ms. Englund incorporates herein all of the issues and facts previously set forth in her Opening Brief with Appendix filed on October 27, 2023, and her Amended Reply Brief with Appendix filed on February 12, 2024, as well as her Sworn Declaration filed on February 2, 2024, and her Response to Respondent's Motion to Strike with Appendix filed on February 26, 2024.

Ms. Englund has adamantly expressed throughout the proceedings that she seeks proper resolution of the case in accordance with Constitutional provisions and due process of law, which is her fundamental right. Ms. Englund asserts there

is an important balance to be found in the expeditiousness of moving a case forward and the necessary constraint that requires judicial proceedings to carefully guard fundamental private rights and follow due process of law in accordance with Constitutional provisions in order to prevent a denial of justice.

Due Process of Law and Appeal "As a Matter of Right"

Due process of law requires that judicial proceedings must protect private rights in accordance with Constitutions provisions and follow the well-established regular course, which is for all cases to be heard first at the lower court and then proceed to an appellate court as a matter of right in cases where the lower court does not properly resolve the matter in accordance with law.

According to Black's Law Dictionary, Fourth Edition, Definition of DUE PROCESS OF LAW: "Law in its regular course of administration through courts of justice. ...[A] course of legal proceedings according to the rule and principles which have been

established in our systems of jurisprudence for the enforcement and protection of private rights."

"Due process of law is process of law according to the law of the land, i.e. the U.S. Constitution as exercised within the limits prescribed and interpreted according to the principles of common law." *Hurtado v. California*, 110 U.S. 516 (1884). See also, *Scott v. McNeal*, 154 U.S. 34 (1894).

Ms. Englund has challenged that the Superior Court lacked the lawful authority to transfer the case directly to the Court of Appeals under RCW 34.05.518 without her consent and over her objections, which was an arbitrary and capricious abuse of discretion that deprived and violated her fundamental Constitutionally protected rights and liberties including due process of law secured by the Fifth Amendment and Washington State Constitution, Article 1, Section 3, and appeal "as a matter of right" secured by Washington State Constitution, Article 1, Section 22.

> "**The right of appeal is as sacred and inviolable as the right to a trial, and when by judicial oppression such right is violated or vitiated, the guaranteed and substantial rights of a party have been materially affected thereby**... The means by which appellant was compelled to abdicate the rightful exercise of her historic right to appeal constituted an excess of power by the court, and the jurisdiction of the court was thereby overreached... As was said in McClatchy v. Superior Court, 119 Cal. 413, 418 [51 P. 696, 39 L.R.A. 691], "Any departure from those recognized and established requirements of law, however close the apparent adherence to mere form in method of procedure, which has the effect to deprive one of a constitutional right, is as much an excess of jurisdiction as where there exists an inceptive lack of power." *Wuest v. Wuest*, 53 Cal.App2d 339 [127 P2d 934](1942). (emphasis added).

Lack of Jurisdiction

Ms. Englund has asserted that when the Superior Court acted without proper lawful authority and transferred the case for direct review in violation of Constitutional protections, the Court of Appeals was subsequently rendered without proper jurisdiction to hear or decide the merits of the case. "When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits." *Melo v. United States*, 505 F.2d 1026 (1974).

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Misapplication of RCW 34.05.518

The statute RCW 34.05.518(1)(b) contains standards for case transfer including that it would "serve the interest of justice" and "would not cause substantial prejudice to any party, including any unrepresented party."

Ms. Englund expressly did not consent to and objected to direct review by the Court of Appeals because it violated her fundamental due process rights (as discussed above), and she has also challenged that her case did not meet the statutory standard for transfer and the Superior Court misapplied RCW 34.05.518, which was an error of law that "substantially prejudiced" her, especially as compared to similarly situated cases that are allowed to follow the usual course of judicial proceedings and are guaranteed non-discretionary appeal "as a matter of right."

According to the Merriam Webster Dictionary definition of the term prejudice, "1: injury or damage resulting from some judgment or action of another in disregard of one's rights

especially detriment to one's legal rights or claims." (www.merriam-webstercom/dictionary/prejudice). This usual meaning of the term prejudice is what Ms. Englund has intended in her documents, including her Motion to Remain in Superior Court.

Ms. Englund has asserted that the case should not have been transferred against her will especially in light of resulting damage to and disregard of her fundamental rights and liberties, (which satisfies the definition of "substantial prejudice"); thus, transfer of the case was not reasonably "in the interest of justice" by any Constitutional standard, and therefore failed the statutory standard.

Additionally, Ms. Englund challenges that the case did not reasonably meet the statutory standard for transfer because it involves disputed issues of both fact and law, whereas, the standard for transfer is that "only issues of law remain for determination." RCW 34.05.518(1)(b).

At the time of filing this Motion for Reconsideration, Discretionary Review proceedings are ongoing at the Washington State Supreme Court (Case No. 102801-6) regarding the issue of unconstitutional misapplication of RCW 34.05.518 in this case and its importance to the public interest. "[T]he public interest is always furthered by enjoining unconstitutional policies *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022)("it is always in the public interest to prevent the violation of a party's constitutional rights.").

Petitioner's Amended Reply Brief with Appendix

Despite lacking proper jurisdiction or authority to proceed on the merits as a consequence of the Superior Court's improper and unconstitutional misapplication of RCW 34.05.518, and in spite of Ms. Englund's repeated requests for the case to be remanded to the Superior Court in accordance with proper due process of law in order to prevent an invalid appellate decision, the Court of Appeals forced briefing on the merits.

Ms. Englund submitted her briefs to the Court of Appeals under protest in order to avoid forfeiture of her claim for unemployment benefits, but adamantly expressed her non-consent and opposition to direct review by an appellate prior to a final judgement of the lower court because it violated her fundamental rights and liberties (as discussed above).

Ms. Englund's Opening Brief with Appendix was filed on October 27, 2023, her Reply Brief with Appendix was filed on January 16, 2024, and her Amended Reply Brief with Appendix was filed on February 12, 2024. Respondent ESD filed a Motion to Strike Petitioner's Amended Reply Brief on February 14, 2024, to which Ms. Englund responded on February 26, 2024.

Ms. Englund is not trained in the legal field or familiar with all court customs regarding procedure or documents, but she has been striving to learn as she goes and do her best to meet expectations, and she has trusted the Court to afford some

leniency and liberally interpret the rules to promote justice per RAP 1.2(a).

The Court of Appeals accepted Petitioner's Amended Reply Brief with Appendix as filed pursuant to RAP 10.7, yet in its April 29, 2024 opinion, struck all of the attached Appendix documents including two judicial notices of relevant points and authorities with material portions of Office of Superintendent of Public Instruction (OSPI) and U.S. Equal Opportunity Employment Commission (EEOC) guidance pertaining to mandatory State and Federal employer policies regarding reasonable work accommodations for employees with sincerely held religious beliefs and moral convictions.

According to the rules of appellate procedure, judicial notices of governing authority on relevant issues of a case are not only proper, but also encouraged in support of a brief. Whereas, RAP 10.4 PREPARATION AND FILING OF BRIEF BY PARTY clearly states: "(c) Text of Statute, Rule, Jury Instruction, or the

Like. 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 an appendix to the brief." (emphasis added).

Therefore, pursuant to court rules, Ms. Englund's judicial notices of relevant points and authorities pertaining to important issues of the case should not have been struck from the Appendix in support of her Amended Reply Brief, and the content of the notices should have been fairly considered by the Court in its determination of the case.

It is important to note that on page 3 of its opinion, the Court of Appeals quoted a section of the Governor's proclamation for operators of educational settings regarding religious accommodations which begins with a mandatory clause. "[must], to the extent permitted by law..." It should be quite obvious that relevant portions of OSPI and EEOC guidance on Title VII of the

Civil Rights Act of 1964 protections in the workplace should reasonably qualify as important to determining the issues of law in this case; certainly, this sort of guidance is as material as the Memorandum regarding Federal Law Protections for Religious Liberty submitted in support of Petitioner's Opening Brief (Appendix 11-35) which was accepted without any opposition.

Ms. Englund objects to Appendix documents being improperly struck. Pursuant to RAP 17.3, Ms. Englund again provides for judicial notice important relevant authorities pertaining to disputed issues of the case in order to assist the Court in deciding this Motion for Reconsideration Appendix 18-24.

Disputed Issues

Throughout the proceedings, Ms. Englund has strived to bring to the Court's attention the numerous inaccuracies regarding the facts and evidence of the case as well as gross mischaracterizations of Ms. Englund's testimony and actions within the ESD decision.

Ms. Englund discussed disputed issues on page 7 of Petitioner's Opening Brief stating, "The testimony and evidence provided by Ms. Englund were mischaracterized by ESD, and the facts of the case in support of Ms. Englund's claim for unemployment benefits were ignored or not given proper weight by ESD, which resulted in the improper denial of benefits to which Ms. Englund is justly entitled." See also, page 9-13 of Petitioner's Amended Reply Brief.

There remain unresolved disputed issues regarding interpretation of the record, weighing of evidence, and application of law and regulations in the case.

As a result of the transfer of the case directly to the Court of Appeals over Mr. Englund's objections, she was unfairly deprived the usual opportunity to correct or supplement the record at the Superior Court level. Consequently, Ms. Englund has tried repeatedly to clarify the facts and evidence of the record through sworn statements summitted to the Court of Appeals,

being the only party in the case with the first-hand knowledge to do so. It is important to note that <u>every</u> court document that Ms. Englund has filed into the case bas been sworn under penalty of perjury.

Ms. Englund has honorably tried to aid the court in resolving disputed issues pursuant to RCW 34.05.562 and RAP 9.11. However, a Commissioner of the Court struck Ms. Englund's sworn declaration dated January 16, 2024 submitted in support of her original Reply Brief, though it clearly stated it was meant for clarification purposes of Ms. Englund's own testimony and she is the only party in the case with first-hand knowledge of the matter.

In her sworn Declaration dated February 2, 2024, and on page 26 of her Amended Reply Brief filed on February 12, 2024, Ms. Englund discussed the statutory discretion of the Court per RCW 34.05.562 to receive new evidence in addition to that contained in the agency record for judicial review if necessary to decide

disputed issues of the case. Being an unrepresented party, Ms. Englund did not think to also reference RAP 9.11 regarding the Court's discretion to take additional evidence on review until her Response to Respondent's Motion to Strike filed on February 26, 2024 (see page 9-10). The statute and the rule are similar and both seemed to indicate to Ms. Englund that the Court may choose to accept any information regarding disputed issues when brought to the Court's attention, which she had reasonably satisfied.

For example, in her February 2, 2024, declaration submitted to the Court prior to the filing of Petitioner's Amended Reply Brief with Appendix, Ms. Englund addressed a number of the elements of RAP 9.11 including that additional information would fairly resolve the disputed issues on review, additional evidence would probably change the decision being reviewed in favor of Ms. Englund, and it would be equitable to excuse Ms. Englund's failure to present the evidence to the Superior Court as a result

of the transfer of the case for direct review against her will. The remaining elements of RAP 9.11 involve issues of equity which Ms. Englund has generally addressed in relation to her being substantially prejudiced and especially disadvantaged as an unrepresented party, and in regards to her testimony and evidence being mischaracterized or disregarded despite being the only party with first-hand knowledge in the case.

Throughout the proceedings, Ms. Englund has discussed under penalty of perjury the true facts based upon first-hand knowledge, but misperceptions remain despite her best efforts to correct the erroneous presumptions.

Fact: Employer never made a claim of misconduct against Ms. Englund.

The separation from employment in this case was non-disciplinary and the Employer did not make any claim of misconduct against Ms. Englund or provide any evidence of "reckless disregard" on the part of Ms. Englund. The Employer has failed to appear whatsoever in this case, so any information

provided to ESD is considered hearsay. The Employer representative who completed ESD's initial questionnaires in early 2022 could only respond according to employment records, but importantly, had no first-hand knowledge of any of the private communications that Ms. Englund had with her supervisor and assistant principal and the HR director regarding her religious objections to the vaccine policy and her desire for reasonable work accommodation upon religious grounds.

After separation, the Employer extended the appeals deadline multiple times until January 2, 2022 for a possible return-to-work. AR 233-234, 241-242. This reasonably demonstrates that there was no real animus between Ms. Englund and the District. ESD incorrectly presumed misconduct in this case though the Employer never made any such claim.

Fact: There was no union agreement during Ms. Englund's employment.

Ms. Englund has tried to clarify numerous times that there was no union agreement during the dates of her employment, but the

falsehood keeps getting repeated in case decisions. The union agreement was provided as an exhibit only for the purpose of showing that it was signed *after* employment separation and *never applied* to Ms. Englund AR 500. The union cover page is dated January 2022 AR 446.

Ms. Englund also testified at the hearing on February 14, 2023 that she had done a records request for the school board which confirmed "there was no official codified policy approved or ratified or voted by the Bellevue School District School Board" while she was employed. AR 37, 251.

Fact: Ms. Englund did request religious accommodation prior to termination of employment in accordance with law and First Amendment protections.

Ms. Englund has repeatedly stated in sworn declarations that she notified the Employer regarding her religious objections to vaccine policy and her desire to continue working with a reasonable accommodation prior to employment separation and subsequent termination of employment.

Ms Englund has tried to clarify the apparent misunderstanding regarding the different meanings of "applying/filing for an exemption" (meaning submission of written form with private details about her specific convictions which she felt violated her sincerely held religious beliefs) as compared to "seeking/requesting accommodation" (meaning notifying the Employer of her religious objections to vaccine policy and asking for protection of employment status and reasonable work accommodation based on her sincerely held religious beliefs and Constitutionally protected rights).

Importantly, as Ms Englund has pointed out numerous times, neither OSPI or EEOC require any form or any written notice or use of any "magic words" such as "religious accommodation" (or "religious exemption") when engaging in the "protected activity" of seeking reasonable work accommodations for religious reasons. *See*, Appendix 18-24.

Likewise, no form is required to claim or exercise a Constitutionally protected right. To qualify for First Amendment protection is simply a matter of whether, "the objector's beliefs are sincerely held and whether they are religious in nature If those two conditions are met, the objector's beliefs are entitled to First Amendment protection" *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981). *See also*, Memorandum on Religious Liberty Protections, Opening Brief Appendix 11-35.

The sincerity of Ms. Englund's religious beliefs are not in question and Ms. Englund testified under oath during the February 14, 2023 hearing regarding what she had shared privately with the Employer about her religious objections to vaccine policy including that the basis of her sincere belief's is the Bible's 10 Commandments. AR 45-46.

Ms. Englund provided an Employer email conversation from October 11, 2021 that corroborates Ms. Englund's sworn

statements demonstrating that she had, in fact, made the Employer aware of her religious objections to vaccine policy prior to employment separation/termination. AR 611-612.

According to the EEOC Compliance Manual on Religious Discrimination, Section 12: "Title VII requires an employer, once on notice, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement... The accommodation requirement is plainly intended to relieve individuals of the burden between choosing between their jobs and their religious convictions... A religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs..." (www.eeoc.gov/laws/guidance/section-12-religious-discrimination), Appendix 22-24.

According to *Sherbert v. Verner*, 374 U.S. 398 (1963): "To condition the availability of benefits upon this appellant's willingness to violate her sacred religious beliefs substantially

burdens her free exercise of religion... The pressure upon her to forego her religious convictions or be barred from benefits is the equivalent of coercing her to violate her free exercise of religion...Moreover, to condition the availability of benefits upon appellant's willingness to violate her religious beliefs has an effect equivalent to the imposition of a fine."

Furthermore, according to Elrod v. Burns, 427 U.S. 347, 373 (1976), "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

Ms. Englund has provided substantial governing authority on the issue of protections for religious freedoms in the workplace, and she objects to any and all inaccurate interpretations or erroneous presumptions made that improperly discredit her sworn first hand testimony and corroborating evidence regarding her honorable Constitutionally protected actions of seeking religious accommodation from the Employer.

Ms. Englund is seeking an Order for Default Judgement in her favor, or alternatively, an Order for Remand to the Superior Court which would not only restore proper due process of law in the case, but also allow for further clarification and correction of the facts of the case in order to appropriately resolve disputed issues.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Ms. Englund incorporates herein all of the grounds for relief and argument previously discussed in her Opening Brief with Appendix filed on October 27, 2023, and her Amended Reply Brief with Appendix filed on February 12, 2024, as well as her Sworn Declaration filed on February 2, 2024 and her Response to Respondent's Motion to Strike with Appendix filed on February 26, 2024.

The Court of Appeals opinion dated April 29, 2024 failed to correct material errors of fact and law in the case or grant relief

to Ms. Englund. Adding insult to injury, the Court's decision had a chilling effect upon Ms. Englund's Constitutionally protected right to petition for redress of grievances, and Ms. Englund finds herself now stripped of her fundamental Constitutionally protected due process right of non-discretionary appeal "as a matter of right" and left with only the option of discretionary appeal, which might be denied without the fair opportunity to be heard unless this Court intervenes in the interest of justice and grants appropriate relief.

Reconsideration by the Court of Appeals is necessary in order to prevent a denial of justice in this case. Ms. Englund is reasonably entitled to relief sought pursuant to RAP 12.4 as a consequence of the uncorrected errors of fact and law contained in both the April 29, 2024 opinion and the decision of the Commissioner of ESD as well as deprivations and violations of Ms. Englund's fundamental Constitutionally protected rights and liberties in the proceedings. Additionally, the unconstitutional misapplication of

statutes in Ms. England's case warrants correction in the public interest.

This Court has a duty to correct errors of law and fact. Where there is a mixed question of law and fact, the error of law standard is appropriate. *Brandley v. Empl Sec. Dep't.* 23 Wn. App 339, 342-343, 595 P2d 565 (1979).

Since issues of law are the responsibility of the judicial branch to resolve, the error of law standard allows the reviewing court to essentially substitute its judgment for that of the administrative body, though substantial weight is accorded the agency's view of the law. But the judges must decide the law according to the constitution, statutes and precedents, regardless of agency view. *Franklin Cy. Sheriff's Office v. Sellers*, 97 Wn.2d 317, 325, 646 P.2d 113 (1982).

The present test allows for greater judicial scrutiny of agency fact-finding as the reviewing court can declare a finding to be clearly erroneous "when although there is evidence to support it,

the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." This change clearly indicated that the Legislature intended to allow broader, more intensive review of an agency's factual determinations. *Ancheta v. Daly*, 77 Wn.2d 255, 259, 461 P.2d 531 (1969). See also, *Abrahams, Scope of Review of Administrative Action in Washington: A Proposal*, 14 Gonz. L. Rev. 75, 80 (1978).

Under the APA, a reviewing court may reverse an administrative decision if: "(1) the administrative decision is based on an error of law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious." RCW 34.05.570(3).

A. An Invalid Act Cannot Be Made Valid with Time

Ms. Englund challenges that the transfer decision of the Superior Court should be considered invalid and void ab initio as a consequence of the unconstitutional misapplication of RCW

34.05.518 and resulting deprivations and violations of Ms. Englund's fundamental Constitutionally protected rights and liberties.

Because the Superior Court exceeded its jurisdiction when it improperly transferred the case for direct review, the Court of Appeals did not acquire proper jurisdiction to proceed on the merits. Since an invalid act cannot be made valid with time, it follows that the subsequent decision by the Court of Appeals on the merits is also invalid as a consequence of the invalidity of the Superior Court transfer decision

"[A] void order is void from its inception and can be vacated without regard to the passage of time." *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 305, 971 P2d 581 (1999).

> "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in

> opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers." *Williamson v. Berry*, 49 U.S. 495 (1850)

Remand to the Superior Court is necessary to correct this error of law and restore proper jurisdiction in the case.

B. Ms. Englund's Sworn First-Hand Knowledge Testimony and Corroborating Evidence Overcome Hearsay and Erroneous Presumptions

This case involves erroneous presumptions of "misconduct" based upon incorrect interpretations and hearsay despite the sworn first-hand testimony and corroborating evidence that Ms. Englund has provided to the contrary disproving any presumption of "misconduct" and instead showing good cause for her actions while engaging in the "protected activity" of seeking reasonable work accommodation based upon her sincerely held religious beliefs and moral convictions.

According to *In Re Young*, Empl. Sec. Comm'r Dec.2d 951 (2010):

> "We do not accept Office of Administrative Hearings' assumptions based on Departmental presumptions. The Administrative Procedure Act requires proof by competent evidence of the truth of statements contained in a Determination Notice. See, e.g., Scheeler v. Department of Employment Security, 122 Wn. App. 484, 93 P.3d 965 (2004)."

Importantly, Ms. Englund is the only party in the case with first-hand knowledge regarding employment separation, and she has testified under penalty of perjury and provided corroborating evidence that she gave proper notice to the Employer prior to termination about her religious objections to vaccine policy (in accordance with OSPI and EEOC policy as well as Constitutional protections) and her desire to be reasonably accommodated to continue her employment.

In contrast, the Employer has not appeared or participated whatsoever in the proceedings to date. As a consequence, all Employer documents and statements are considered hearsay. No finding of fact or conclusion of law can be made upon hearsay

evidence alone. *Pappas v. Employment Security Department*, 135 Wn. App. 852,857, 146 P3d 1208 (2006).

Thus, the Employer is precluded from reaching the required burden of proof necessary to overcome Ms. Englund's sworn first-hand knowledge testimony and corroborating evidence. It is also important to note that the Employer never even made a claim of "misconduct" against Ms. Englund. The incorrect presumption of "misconduct" came from ESD, not the Employer.

Therefore, Ms. Englund's evidence, which firmly establishes that she is justly eligible and entitled to unemployment benefits, stands unrebutted as truth and fact in law. In light of this, Ms. Englund has asked repeatedly for and continues to seek an Order for Default Judgement in her favor.

According to ESD precedence in the similarly situated case of *In Re Gardner*, Empl. Sec. Comm'r Dec 2d 1022 (2018):

> "The burden of establishing misconduct must be borne by the party alleging the misconduct which, in this case, is the

employer. Misconduct may not be presumed, and it is the employer's burden to prove misconduct by a preponderance of the evidence. In re Veroa, Empl. Sec. Comm'r Dec.2d617 (1980); In re Ash, Empl. Sec. Comm'r Dec.2d 401, (1978); In re Ostrom, Empl. Sec. Comm'r Dec2d 204 (1976). A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighed against the evidence in opposition to it. Yamamoto v. Puget Sound Lumber Co., 84 Wn. 411, 146 P. 861 (1915)... **No one, other than the claimant, was present at the hearing with first-hand knowledge of the circumstances which resulted in claimant's separation from employment. An employer does not meet its burden of proof with only hearsay evidence.** In re Crowley, Empl. Sec. Comm'r Dec. 936 (1972); In re Garrett, Empl. Sec. Comm'r Dec. 393 (1958)... **Because the employer chose not to participate in the hearing and because the employer's only evidence was hearsay, misconduct as defined by RCW 50.04.294 has not been established.**" (emphasis added).

Ms. Englund is baffled why her case has not been decided accordingly and demands equal treatment and protection under the law. The Court of Appeals should correct this clear error of law and grant the unemployment benefits to which Ms. Englund is eligible and justly entitled.

C. Court of Appeals Opinion Is Incongruent with Agency and Federal Case Precedence

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An important and mandatory element of due process of law is impartial treatment. Ms. Englund suffered bias and was deprived a neutral adjudicator in the administrative proceedings, and she trusted the Court to conduct a fair de novo review in order to correct the errors of the case. However, it seems Ms. Englund's case is continuing to be evaluated and determined differently than by the usual standards of review.

As discussed above, Ms. Englund's sworn first-hand knowledge testimony has been mischaracterized and her attempts to clarify and correct misunderstandings regarding the evidence of the record have been rejected.

The improper weighing of evidence of the case violated the spirit and purpose of the Employment Security Act which *shall* be liberally construed for the purpose of protecting unemployed workers and reducing the burden of economic insecurity and suffering caused thereby to a minimum per RCW 50.01.010. See, *Shaw v. ESD*, 46 Wn.App. 610, 731 P2d 1121 (1987) and

Johnson v. Department of Empl. Sec., 112 Wn.2d 172, 179 769 P.2d 305 (1989).

The misapplication of RCW 50.04.294 in this case, is in contrast to case precedent that statutes which might lead to a forfeiture are to be strictly construed See, *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (Wis. 1941).

Ms. Englund has challenged it is not reasonable that communicating religious objections to violative policy and seeking a work accommodation based on sincerely held religious beliefs and moral convictions should be construed as any sort of "misconduct," especially since federal law considers this to be "protected activity." Ms. Englund also pointed out the inconsistency of labeling religious objections to violative policy as "misconduct" under RCW 50.04.294 when an employee desires to continue working but is not reasonably accommodated by the employer, while considering religious objections to

violative policy as a "good cause" reason for an employee to voluntarily quit under RCW 50.20050 and WAC 192-150-140.

The Court of Appeals decision dated April 29, 2024 is not only inconsistent with statutory standards for determining unemployment benefits, but it is also incongruent with long-standing governing case law regarding First Amendment protections in the workplace. See, *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707 (1981). See also, Memorandum on Federal Law Protections for Religious Liberty, Opening Brief Appendix H-35.

The Court of Appeals failed to correct the errors of fact and law in the case and deprived Ms. Englund of protection of her fundamental rights, which ultimately led to the continued improper denial of unemployment benefits to Ms. Englund to which she is eligible and justly entitled.

Ms. Englund respectfully asks that the errors of this case be corrected and her fundamental rights and liberties be properly protected in accordance with law. "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).

V. CONCLUSION

Ms. Englund prays this Court will exercise its lawful duty and statutory discretion and authority to intervene in the interest of justice to grant this Motion for Reconsideration, set aside the erroneous Court of Appeals opinion for the reasons discussed above, and provide the relief Ms. Englund seeks or any other relief this Court deems proper.

I, Laurie A. Englund, certify that this document contains 5,906 words (less than 6,000 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 20th day of May, 2024, in Bellevue, King County, Washington State

Laurie A Englund

Laurie A. Englund, Petitioner

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PROOF OF SERVICE

I, Laurie A. England, certify that I sent a copy of Motion for Reconsideration with Appendix for service on all parties or their counsel of record on the date below as follows:

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I, Laurie A. England, 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 20th day of May, 2024, in Bellevue, King County, Washington State

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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LAURIE A. ENGLUND,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

No. 85694-4-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Laurie Englund, has filed a motion for reconsideration. The court has considered the motion pursuant to RAP 12.4 and a majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Birk, J.

Judge

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LAURIE ENGLUND - FILING PRO SE

June 27, 2024 - 3:57 PM

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