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**Case No. 103214-5**

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**SUPREME COURT  
OF STATE OF WASHINGTON**

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Laurie A. Englund,  
Petitioner,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY  
DEPARTMENT,  
Respondent.

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

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Laurie A. Englund, Petitioner  
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## **I. INTRODUCTION**

Petitioner, Laurie A. Englund, submits now this Reply to Department's Answer to Motion for Judicial Notice filed by Respondent Employment Security Department (ESD) on October 24, 2024, pertaining to Ms. Englund's Petition for Judicial Review calendared for a conference date of November 5, 2024. See ER 201.

Importantly, in her Petition for Judicial Review filed with this Court on June 27, 2024 (Reply filed on August 30, 2024), Ms. Englund intentionally preserved and incorporated for appeal all assignments of errors, issues, facts, grounds for relief, and argument 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. This included Ms. Englund's assertions that she had not received a fair review from an impartial adjudicator which

substantially prejudiced her and violated her fundamental due process rights; an issue that she raised and preserved repeatedly since her original Petition for Judicial Review filed with the Superior Court on May 22, 2023 (see page 3, Superior Court Case No. 23-2-09285-6SEA). See also, pages 29 and 58 of Petitioner's Opening Brief filed on October 27, 2023, pages 13-16 and 33 of Petitioner's Amended Reply Brief filed on February 12, 2024, and page 35 of Petitioner's Motion for Reconsideration filed on May 20, 2024 (Court of Appeals Case No. 85694-4) which states: "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."

Ms. Englund obtained public records information on January 12 and 19, 2024 showing significant employment/financial ties

between ESD and the Office of Administrative Hearings (OAH), and brought this issue to the Court's attention as soon as possible in her Amended Reply Brief filed on February 12, 2024.

In its unpublished opinion dated April 29, 2024, the Court of Appeals struck the entire Appendix of Petitioner's Amended Reply Brief for a procedural issue of "failure to comply with RAP 9.11," stating that Ms. Englund "did not address any of the six requirements before attaching the appendix to her brief."

As an unrepresented party striving her best, Ms. Englund expressly objected to the improper and erroneous striking of any of her honorably filed Appendix documents and argued that she had, indeed, reasonably met the conditions of RAP 9.11 as well as RCW 34.05.562, especially in light of the presence of disputed issues of the case requiring proper resolution by the Court, the equitability of excusing Petitioner's failure to present the information earlier than her actual receipt and discovery of that information in January 2024, and considering the Court's

deprivation of Ms. Englund's fair opportunity to be fully heard at the Superior Court as a consequence of her case being in appropriately transferred directly to the Court of Appeals without Petitioner's consent and over her objections. See Motion for Reconsideration pages 15-19.

Ms. Englund is learning as she goes and has been working hard to meet Court expectations and cure any unintentional procedural deficiencies. While reviewing the court rules in the past few weeks, Ms. Englund realized that the Court's preference might be to receive public records information via a Judicial Notice (separate motion versus attached exhibit to briefing), so she promptly and honorably submitted the public records information pertaining to her case by Judicial Notice pursuant to ER 201 prior to the scheduled November 5, 2024 conference date so that the facts and information provided might aid this Court's fair consideration in the interest of justice.

Ms. Englund raised no new argument by presenting the Court with public records for judicial notice which corroborate her previous timely-raised credible and valid assertions intentionally preserved on appeal that she was deprived of a neutral decision maker and, consequently, suffered bias in the administrative proceedings in violation of due process of law. Ms. Englund expressly objects to and disagrees with ESD's claim that Petitioner's arguments regarding deprivations and violations of her fundamental due process rights are "without merit," as discussed below.

Furthermore, ESD concedes in its response that ER 201 permits the Court to take judicial notice of facts and public records at any stage of the proceeding. ER 201(f).

In actuality, Petitioner's Judicial Notice which was submitted in good faith is neither untimely nor improper.

This Court should take official notice accordingly.

As an unrepresented party without legal training, Ms. Englund 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); *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

## **II. STATEMENT OF THE CASE/ARGUMENT**

Ms. Englund has made numerous and repeated arguments throughout the proceedings demonstrating the lack of impartiality and existence of bias on the part of the administrative adjudicators which resulted in substantial prejudice against her and violation of her fundamental due process rights.

These arguments were intentionally preserved on appeal in Petitioner's Motion for Judicial Review filed with this Court by the express incorporation of relevant sections of her Opening Brief, Amended Reply Brief, Motion for Reconsideration, and other related filings.

**A. Petitioner has Reasonably Established the Existence of Bias Against Her in the Administrative Proceedings**

In her Opening Brief, Petitioner assigned error to the Administrative Law Judge (ALJ) and the Commissioner of ESD for bias that she experienced in the administrative proceedings. See Issue 5 on page 15: "Whether the ALJ and Commissioner of ESD mischaracterized, discredited, or ignored the testimony and evidence of Ms. Englund in denying unemployment benefits?"

On page 20 of her Opening Brief, Ms. Englund discussed the impeachment of the Employer, Bellevue School District (BSD) for making a false statement to ESD: "At minimum, making a false statement constitutes an impeachment issue on the part of the Employer for which no weight should reasonably be given in regards to the preponderance of evidence standard of claim evaluation." See also page 29-30: "Further, Ms. Englund's due process rights, protected by the Fifth Amendment of the Constitution for the united States of America and Washington State Constitution, Article 1, Section 3, have been infringed upon



throughout these mis-adjudicated proceedings and Ms. Englund has not received a fair review from an impartial/objective trier of fact. Employment Security Department (ESD) erred in making Findings of Fact and Conclusions of Law for the Employer despite hearsay and impeachment, and without any proper evidence provided by the Employer which has the burden of proof.”

As the only party in the case with first-hand knowledge of the circumstances of employment separation, Ms. Englund has argued that as result of adjudicator bias, the “facts were not given proper weight by ESD, which resulted in the mis-adjudication of the case and the improper denial of unemployment benefits for which Ms. Englund is justly entitled.” See Opening Brief page 34. See also, Petitioner’s Amended Reply Brief pages 13-16, 33.

In her Motion for Reconsideration to the Court of Appeals (page 33-34) and in her Petition for Judicial Review filed with this Court (page 19-20), Ms. Englund also presented evidence of bias

against her such that the case was not decided fairly/equally in the administrative proceedings according to established precedence per *In Re Gardner*, Empl. Sec. Comm'r Dec.2d 1022 (2018) (which provides that an eligible employee with first-hand knowledge of the circumstances of employment separation should be awarded unemployment benefits if the employer fails to appear and consequently is precluded from reaching its burden of proof for a finding of misconduct upon the preponderance of evidence).

In light of the above, Ms. Englund has reasonably established for the Court the existence of bias against her which substantially prejudiced her, and she expressly objects to and disagrees with ESD's false statement that "Englund fails to identify anything in the ALJ's conduct or order that actually indicates bias. That is because the ALJ presided over Englund's administrative appeal in a fair and impartial manner." Department's Answer page 6. On the contrary, as discussed above, Ms. Englund has provided

substantial indication and evidence that the proceedings have been significantly tainted with bias against her.

**B. Even the Appearance of Impropriety or Bias is a Violation of Fairness Doctrine and Fundamental Due Process Rights**

Importantly, even without clear evidence of bias provided by Petitioner as reflected by public records showing significant employment/financial ties between ESD and OAH as well as numerous examples of improper actions and erroneous findings/conclusions by an unfair ALJ as discussed above, the very appearance of impropriety or bias on the part of the adjudicator is itself enough to establish a violation of fairness doctrine and fundamental due process rights.

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). It is well settled that “[e]ven appeal and a trial de novo will not cure a failure to provide a neutral and detached adjudicator.” *Concrete Pipe & Prod. of Cal., Inc. v. Constr.*

*Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 618 (1993).

Furthermore, due process will not tolerate a judge with a financial interest in the case. *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749 (1927).

Washington's Appearance of Fairness Doctrine goes even further and not only requires a judge to be impartial, it also requires that the judge appear to be impartial. *State v. Finch*, 137 Wash.2d 792, 808, 975 P.2d 967 (1999). As discussed at length by *Tatham v. Rogers*, 170 Wn. App. 76 (Wash. Ct. App. 2012):

“The appearance of fairness doctrine was first enunciated in *Smith v. Skagit County*, 75 Wash.2d 715, 453 P.2d 832 (1969). *Harris v. Hornbaker*, 98 Wash.2d 650, 659 n. 2, 658 P.2d 1219 (1983). As originally applied, it extended procedural protections typical of adjudicatory proceedings to quasi-judicial proceedings. It also permitted inquiry into the motives and interests of decision makers in quasi-judicial proceedings, including by extending rules of disqualification that apply to judges under former CJC Canon 3(C) (1976) to rezoning and other agency decisions that are essentially adjudicatory. *Id.* at 664–65, 658 P.2d 1219 (Utter, J., concurring)... Like the protections of due process, Washington's appearance of fairness doctrine seeks to prevent the problem of a biased or potentially interested judge. *State v. Carter*, 77 Wash.App. 8, 12, 888 P.2d 1230 (1995). Under this doctrine, evidence of a

judge's actual bias is not required; it is enough to present evidence of a judge's actual or potential bias. "The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." *Sherman v. State*, 128 Wash.2d 164, 205, 905 P.2d 355 (1995)."

It is important to note that Washington's appearance of fairness doctrine applies to quasi-judicial proceedings such as OAH hearings and ESD agency decisions and necessarily includes impropriety and bias arising from financial ties of the adjudicator pursuant to the Canons of OAH ALJ Code of Ethics.

Furthermore, the Administrative Procedures Act (APA) states: "Nothing in this chapter may be held to diminish the constitutional rights of any person." RCW 34.05.020. Additionally, RCW 34.05.040 mandates that any part of the chapter in conflict with federal law requirements (such as constitutional due process protections) is inoperative. Consequently, the statutory provisions regarding funding and employment agreements between ESD and OAH which are violative of the fairness and impartiality requirement of due

process of law warrant revision in order to protect the fundamental rights of the parties and prevent ongoing impropriety and bias of adjudicators in administrative proceedings.

### **C. Petitioner is Entitled to Relief**

Pursuant to the clear standards for Constitutional due process protections and Washington's appearance of fairness doctrine requirements, Ms. Englund has reasonably demonstrated through judicially noticed facts and public financial records the existence of impropriety and bias on the part of the administrative adjudicators in this case, entitling her to relief.

Relevant Washington State Appellate Court and US Supreme Court case precedence (as discussed above and in Petitioner's Judicial Notice filed with this Court) establishes that appropriate relief for the existence of impropriety that violates due process of law is generally vacation of the biased decision and remand to a neutral adjudicator.

A judgment entered into a proceeding which does not comport with procedural due process is void...[A]nd all subsequent order, since viability rests on the former, are vacated..." Esmieu v. Schrag, 15 Wn. App. 260, 265, 548, P.2d 581 (1977).

Ms. Englund has requested a thorough and fair de novo review and remand to the Superior Court in order to restore proper due process of law in this case.

### **III. CONCLUSION**

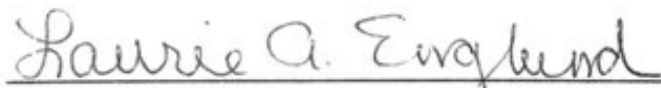
For the reasons discussed above, this Court should fairly consider Petitioner's Judicial Notice and take official notice of the facts and public records information relevant to the case as requested by Petitioner, Laurie A. Englund. Furthermore, Ms. Englund also asks this Court to grant appropriate relief in the interest of justice considering the evidence that she has provided showing that the administrative adjudication was improperly tainted with bias against her.

I, Laurie A. Englund, certify that this document contains 2383 words (less than 2,500 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 29th day of October, 2024, in Bellevue, King County, Washington State.

  
Laurie A. Englund, Petitioner

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## PROOF OF SERVICE

I, Laurie A. Englund, certify that I sent a copy of Reply to Answer to Judicial Notice for service on all parties or their counsel of record on the date below as follows:

Court's Copies Delivered Electronically to:

Supreme Court

Temple of Justice

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Attorney General's Copies Delivered Electronically to:

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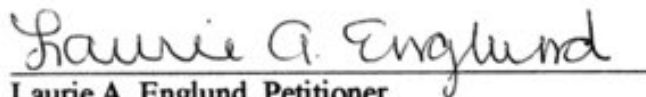
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I, Laurie A. Englund, swear and declare under penalty of perjury under the laws of Washington State that the foregoing is true and correct to the best of my knowledge.

SIGNED AND DATED this 29<sup>th</sup> day of October, 2024, in Bellevue, King County, Washington State.



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# LAURIE ENGLUND - FILING PRO SE

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## Transmittal Information

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