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Brief of Amici Curiae Legal Voice and Korematsu Center

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NO. 95205-1

SUPREME COURT OF THE STATE OF WASHINGTON

CHRISTOPHER H. FLOETING,

Respondent/Plaintiff,

v.

GROUP HEALTH COOPERATIVE,

Petitioner/Defendant.

BRIEF OF *AMICI CURIAE* LEGAL VOICE AND KOREMATSU CENTER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Table of Authorities, continued

Page

Statutes

Regulations

Other Authorities

Table of Authorities, continued

Page

Miscellaneous

Table of Authorities, continued

Page

I. INTERESTS OF *AMICI CURIAE*

Legal Voice is a regional non-profit public interest organization that works to advance the legal rights of women and LGBTQ people in the Pacific Northwest through litigation, legislative advocacy, and legal rights education. Since its founding in 1978 as the Northwest Women's Law Center, Legal Voice has participated as counsel and as amicus curiae in cases throughout the Northwest and the country involving gender discrimination, including sexual harassment and sex discrimination in the workplace, educational settings, and in public accommodations. Legal Voice was counsel in one of the few Washington Supreme Court cases involving a claim of sex discrimination in a place of public accommodation, *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 59 P.3d 655 (2002). Legal Voice has a strong interest in ensuring that the Washington Law Against Discrimination is interpreted to fully protect against all forms of gender-based discrimination and harassment.

The Fred T. Korematsu Center for Law and Equality ("Korematsu Center") is a nonprofit organization based at Seattle University School of Law and works to advance justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu who defied military orders during World

War II that led to the internment of 110,000 Japanese Americans, and later became an advocate for civil rights of others who are victims of discrimination. The Korematsu Center has a strong interest in ensuring that effective remedies exist to address discrimination. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

II. INTRODUCTION

The places of public accommodation in our state – from hotels to restaurants to Starbucks coffee shops – have been subject to the Washington Law Against Discrimination (WLAD) for over half a century. Yet, in that timeframe, the appellate courts have had occasion to consider the contours of that law on fewer than a dozen occasions, and, before now, have never considered whether proprietors can be held liable for discrimination leveled at patrons by the clerks, waiters, and baristas who serve them. This dearth of authority underscores a problem of under-enforcement; it does not, however, invite the Court to borrow a legal construct from employment claims that arise under a different provision of the WLAD simply because the construct is there, and it is familiar. The Court of Appeal's decision on this issue of first impression does not "conflict" with employment cases such as *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 410, 693 P.2d 708 (1985); rather, it tracks the plain

language of WLAD's public accommodation provision and furthers its separate aims. The decision should be affirmed.

III. STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case as outlined by Mr. Floeting in his Answer to Group Health's Petition for Review.

IV. ARGUMENT

A. The WLAD Is Construed Liberally to Effectuate the Purpose of the Act

Washington State has a long and proud tradition of being on the forefront of promoting civil rights. In 1949, the Legislature enacted anti-discrimination laws targeting the workplace;[1] in 1957, it added further protections in places of public accommodations and publicly-assisted housing;[2] and in 1973, it passed anti-discrimination laws protecting persons with disabilities.[3] All of these state law enactments preceded similar provisions under the federal 1964 Civil Rights Act, the 1968 Fair Housing Act, and the Americans with Disabilities Act of 1990, respectively.

What is more, the WLAD has a broader reach than analogous federal laws; for example, it protects women, breastfeeding mothers, and

[1] Laws of 1949, ch. 183, § 1.
[2] Laws of 1957, ch. 37, §2.
[3] Laws of 1973, ch. 141 (adding sex, marital status and age); Laws of 1973, ch, 214 (adding disability); Laws of 2009, ch. 164 (adding breastfeeding).

LGBTQ people from discrimination in places of public accommodation.[4] RCW 49.60.040; *see also* WAC 162-32-040 (describing prohibited harassment based on gender identity/expression in place of public accommodation). And in contrast to federal anti-discrimination legislation, our state statute includes express and emphatic language, directing the courts to construe the Act liberally to effectuate its purpose. RCW 49.60.020; *see also Fraternal Order of Eagles*, 148 Wn.2d at 247 (noting the statute should be liberally construed).

B. The Legislature Broadly Defined "Full Enjoyment"

In the public accommodations context, the right to be free from discrimination means the right to "full enjoyment" of the services and privileges offered. RCW 49.60.030. Being denied or deprived of such services on the basis of one's protected class is an affront to personal dignity. *See State v. Arlene's Flowers, Inc.*, 389 P.3d 543, 553, 187 Wn.2d 804, 825 (2017) (holding that flower shop owner's refusal to provide services to same-sex couple violated WLAD's public accommodation provision and noting the "grave and continuing harm" associated with such discrimination) (citations omitted); *see also Anderson v. Pantages Theater Co.*, 114 Wn. 24, 31, 194 P. 813 (1921) ("The act [of discrimination] alleged in itself carries with it the elements of an assault

[4] Laws of 2006, ch. 4 (adding sexual orientation).

upon the person, and in such cases the personal indignity inflicted, the feeling of humiliation and disgrace engendered, and the consequent mental suffering are elements of actual damages."); *accord Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964) (the "fundamental object" of laws banning discrimination in public accommodations is "to vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments") (internal citation and quotations omitted).

Under the WLAD, "full enjoyment" in places of public accommodation is broadly defined:

> 'Full enjoyment of' includes he right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

RCW 49.60.040(14). Said another way, WLAD's guarantee of "full enjoyment," extends beyond outright *denial* of service to include mistreatment that causes a person in a protected class to feel "not welcome, accepted, desired, or solicited." *Id.* Group Health has now abandoned its argument that sex-based harassment is somehow beyond the

reach of WLAD's public accommodation provisions. *See* Pet. at 2. This brief, therefore, focuses on whether proprietors are liable for the harassment carried out by employees.

C. The Plain Language of Section 215 Makes Proprietors Directly Liable for Harassment Leveled Against Patrons

Group Health urges the Court to define the scope of liability for proprietors of public accommodations (Section 215) by importing agency-principal rules of liability applied to discrimination claims against employers (Section 180). The predictable effect of Group Health's proposed construction is to narrow the entity's risk and exposure. As the Court of Appeals concluded, the plain language of Section 215 does not so permit.[5]

The public accommodations provision of the WLAD makes entities (persons) directly liable for the acts of employees:

> It shall be an unfair practice for any person *or the person's* agent or *employee* to commit an act which directly or indirectly results in any distinction, restriction, or discrimination….[in a place of public accommodation].

RCW 49.60.215 (emphasis added). The provision is plain on its face: any "person" is directly liable for the unfair acts of his or her (or its)

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[5] The starting point for determining legislative intent is the language of the statute. *See Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). If the language is plain on its face, as here, the Court goes no further. *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994) ("Plain language does not require construction.").

"employee" separate and apart from the acts of any "agent" of the entity. That is, the Legislature calls out the concept of agency separately, by using the disjunctive ("or"), between "agent" and "employee." *Id.* No other construction of the statute is required because it is plain on its face; Group Health is liable for T.T.'s misconduct because, simply enough, T.T. is Group Health's employee.

In fact, there are fourteen different "unfair practices" provisions under the WLAD, and the Legislature chose just two instances in which the acts of employees would be automatically imputed to the entity: (1) the public accommodations provision (Section 215), quoted above, and (2) the provision that follows it, concerning discrimination against persons with disabilities who use service animals in eating establishments (section 218). Both use the identical direct-liability phrase ("a person or a person's agent or employee"), in stark contrast to the other dozen provisions. *See, e.g.*, RCW 49.60.176 (making "any person" liable for unfair practices in connection with credit transactions); .178 (same as to insurance transactions); .180 (making any "employer" liable for employment discrimination); .222 (making "any person" liable in connection to real estate transactions); .190 (making any "labor union or labor organization" liable for discrimination in union membership); .200 (making any

"employment agency" liable for discrimination); .223 (making any "person" liable as to rental or sale of property in a given neighborhood).

Although *all* provisions of the WLAD target unlawful discrimination, the Legislature defined the contours of "unfair practice" in a manner that is context specific. As to Section 215, the Legislature broadly declares it an unfair practice to commit an act that results "*directly or indirectly*" in (1) "*any* distinction, restriction, *or* discrimination" in a place of public accommodation, or (2) requires any person to pay more than the uniform rates charged other persons, or (3) "refus[e] or withhold[]" admission from any person because of her protected status. RCW 49.60.215 (emphasis added). The employment provision, meanwhile, declares it an unfair practice for an employer (1) to "refuse to hire any person" based on protected status (2) to "discharge or bar" such a person from employment (3) to discriminate in compensation or in any terms or conditions of employment, or (4) to, *inter alia* discriminate in advertising for a position. RCW 49.60.180. On their face, the two provisions have distinct prohibitions, specific to the context. Conduct that results in "any" "distinction, restriction, *or* discrimination" in the "full enjoyment" of public accommodation services is markedly distinct in both nature and breadth from conduct that courts (and juries) have deemed

sufficient to disrupt the "terms or conditions" of the employment relationship.

In light of this, we must presume, as the Court of Appeals did, that the addition of direct (or imputed) liability – in just two of a dozen provisions of the WLAD was intentional – not by accident – and a result of the unique context in which the particular discrimination occurs. *Cf. In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (presuming that the use of language in one provision of a statute that differs from another was intentional, applying "expressio unius" canon of statutory construction); *accord Keene Corp. v. United States*, 508 U.S. 200, 208, 113 S. Ct. 2035, 124 L. Ed. 2d 118 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)) (reasoning that where lawmakers include particular language in one section of a statute but omits it in another, it is presumed that the Legislature acts "intentionally and purposely in the disparate inclusion or exclusion").

D. Direct Liability Furthers the Purpose of Section 215

A plain language reading of Section 215 to allow for direct liability in the public accommodations setting makes sense when applied to the real world. Unlike dealings in the workplace where employees and employers owe to one another a myriad of duties and interact day after day, and week after week, most consumer interactions are fleeting (even if

Mr. Floeting's was not).[6] Take, for example, a lifeguard who levels anti-immigrant, Islamophobic insults toward a Somali man and his hijab-wearing daughter. The most likely outcome is that the father will simply take his daughter elsewhere, leaving the lifeguard to repeat her offenses on the next Muslim family. In the very unlikely event the father summons the courage to complain, the very most he will get, according to Group Health, is an apology. Under Group Health's view, the pool owner is never liable for the unquestionably unfair practice of its lifeguard unless he also happens to be the pool manager (i.e., the owner's "agent") or unless upper-management had notice of prior, similar incidents and failed to take action. Absent one of these two conditions, Group Health argues, no liability attaches to the owner no matter how offensive, degrading, or harmful the lifeguard's conduct.

Not only does Group Health's argument run afoul of the plain language of the direct-liability provision in the statute, it has the perverse effect of creating a "no liability" rule in the vast majority of cases. As the court below recognized, consumer encounters typically occur with rank-

[6] There are occasional exceptions where an individual's contact with the public accommodation may be repeated and not fleeting--as in this case, where both Mr. Floeting's health care needs and his insurance required him to return to the same location for services. Those exceptions merely mean that the business owner has an even greater opportunity for notice of its employee's discriminatory conduct. They do not obviate the real-world need for a different standard in public accommodations claims to address the typical case of the short-lived interaction.

and-file employees – clerks, salespeople, receptionists – not with owners and managers. *Floeting v. Grp. Health Coop.*, 200 Wn. App. 758, 771, 403 P.3d 559 (2017); *cf. Arguello v. Conoco, Inc.*, 207 F.3d 803, 810 (5th Cir. 2000) (rejecting strict adherence to agency principles in public accommodation context because "a rule that only actions by supervisors are imputed to the employer would result, in most cases, in a no liability rule"). The Court of Appeals correctly concluded that the WLAD's purpose in the context of public accommodations would be frustrated by a liability rule that adheres to agency principles. *Floeting*, 200 Wn. App. at 771. Indeed, without the imposition of direct liability, owners and operators have little incentive to train and supervise their staff to avoid harassment.[7]

E. Defining Liability as Context-Specific Is Not a "Double Standard"

For its part, Group Health not does present any theory of statutory construction that would call for the Court to borrow agency liability principles developed in one of the fourteen "unfair practices" provisions (section 180) in order to construe WLAD's public accommodation provision (Section 215) more narrowly than how the Legislature wrote it.

[7] The concern in *Arguello* for avoiding perverse results is equally warranted here, but this Court is not so constrained by the common law backdrop as the Fifth Circuit was in construing claims under federal civil rights statutes (section 1981 and 1983) which include no such statutory-imputed liability as here.

It simply urges the *Glasgow* standard to avoid what it self-servingly describes as a "dizzying" "double standard."

First, even setting aside the difference in the plain language of the two provisions, it is not a "double standard" to treat liability differently from one context to another. Indeed, that is the near daily work of our courts and our lawmakers; i.e., to circumscribe liability according to the relationship between the actors and the context they find themselves in – from landlord-tenant to owner-invitee to employer-employee and so on.

Second, this Court should not opt for a standard of agency-principal liability just because it is familiar. For starters, no Washington court has articulated why, exactly, WLAD's scope of employer liability is coterminous with that under Title VII when the text of the two statutes differs in many respects. *Compare* RCW 49.60.040(11) (definition of "employer" includes "any person…who employs….") *with* 42 U.S.C. 2000e(b) ("Title VII") (definition of "employer" includes "a person engaged in an industry affecting commerce … and any agent of such a person…"); *and Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 754-55, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998) (reasoning that Congress intended the courts to interpret Title VII based on agency principles in light of the fact that "employer" is defined under Title VII to include "agents"). Thus, even in the employment context, the logic of adopting

common law agency principles in defining the scope of employer liability is not altogether clear, although it is now a well-worn path. *See Glasgow*, 103 Wn.2d at 407 n.2 (citing federal appellate decisions construing Title VII as instructive for determining the elements of a sexual harassment claim in the employment context). And while the logic of adopting such a theory of liability in the employment context is beyond the scope of the issues presented, the problems of such a regime should not be lightly "borrowed" in the name of consistency or familiarity. *See* Catherine Fisk & Erwin Chemerinsky, *Civil Rights Without Remedies: Vicarious Liability Under Title VII, Section 1983, and Title IX*, 7 Wm. & Mary Bill Rts. J. 755, 757 (1999) (discussing the "puzzle of the inconsistency" for imputing liability and advocating for a simple vicarious liability rule across all civil rights statutes).[8]

The salient fact is that our Legislature chose to do something different here with respect to treatment of members of the public, such as consumers, in places of public accommodation. Undoubtedly, this is the province of the Legislature – to establish standards of conduct and attendant rules of liability in pursuit of public policy and the greater good.

[8] To add to the confusion, courts acknowledge that "common-law principles may not be transferable in all their particulars to Title VII." *Burlington Indus., Inc.*, 524 U.S. at 755 (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 72, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986). But when, why, and how they apply is not always clear; the Court should tread carefully in looking to employment cases as persuasive authority.

See, e.g., *Callan v. O'Neil*, 20 Wn. App. 32, 578 P.2d 890 (1978) (recognizing liability of tavern owner for harm caused by intoxicated minor, reasoning that the Legislature proscribed certain conduct, thus establishing a duty different from that at common law); *accord United States v. Park*, 421 U.S. 658, 672-73, 95 S. Ct. 1903, 44 L. Ed. 2d 489 (1975) (recognizing congressional intent to impose higher standard of care on food sellers, imposing criminal liability even where no awareness of wrongdoing, incentivizing those in position to act to prevent hazards). In drafting Section 215 to impose direct liability to the employer for the employee's unfair practices, the Legislature has incentivized companies to take proactive steps to train and supervise their rank and file employees – (i.e., the people who actually interact with the customers) – to ensure compliance with the law. *Cf. Park*, 421 U.S. at 672-73.

F. There is No Evidence that a Rule of Direct Liability Will Result in a Flood of Lawsuits

This Court should view with a heavy dose of skepticism, Group Health's suggestion that a rule of direct liability will open the floodgates to lawsuits. The public accommodation provision of the WLAD has existed for over a half-century; and laws protecting against race discrimination in public accommodations go back twice as far. *See Anderson*, 114 Wn. at 27 (quoting Rem. Code § 2686). Even so, there is a dearth of reported cases. There is no reason to believe that discrimination

on the basis of race, sex, religion, disability, and the like is any *less* prevalent in our theaters, pools, and coffee shops than it is in our workplaces, but while the latter has led to a vast body of decisional authority, there are by comparison almost no cases vindicating civil rights in places of public accommodations.

The reality is that discrimination in our businesses and public places, however unconscionable, does not typically bring with it significant monetary damages – whether the harm is perpetrated by store owners or clerks. Unlike an employee who can recover lost wages when she is fired from her job for unlawful reasons, a customer who is harassed or targeted by a barista has no such claim. Few people who have experienced harassment or discrimination in a place of accommodation will therefore be inclined to endure the stress of litigation for what would amount to a moral victory (particularly by the time the costs of suit are paid). And plaintiffs' attorneys, more often than not paid on contingency, are unlikely to be willing to take on the risk of litigating such claims when the potential for recovery is effectively limited to fees. Affirming the Court of Appeals' ruling will not change the structural issues that have limited the feasibility of bringing these claims for a half century. Moreover, floodgates arguments cannot be squared with the overriding purpose of the WLAD: to protect Washingtonian's civil rights in the face

of long histories of national and local discrimination. *Xieng v. Peoples Nat. Bank of Washington*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993) (noting that the WLAD "embodies a public policy of the highest priority") (internal citation and quotation omitted); RCW 49.60.010 (declaring that "discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state").

G. Discrimination Poses Barriers to Accessing Health Care.

Finally, *Amici* respectfully request the Court to consider the specific context of health care in which this case arises. In the health care setting, harassment not only can itself create negative health impacts, but it also can result in denial and/or impairment of access to care in important and harmful ways.

Critically, sexual or other forms of harassment in health care can discourage people from seeking care.[9] For example, a provider who uses derogatory language when talking to a woman who is unmarried and

[9] When patients do not feel comfortable as a result of harassment or because of a provider's perceived implicit or explicit bias, they are less likely to get comprehensive medical care. *See, e.g.*, Irene Blair et al., Clinicians' Implicit Ethnic/Racial Bias and Perceptions of Care Among Black and Latino Patients, 11 Annals of Family Med. 43, 43 (2013) (finding that "clinicians' implicit bias may jeopardize their clinical relationships with black patients, which could have negative effects on other care processes"); Valerie Ulene, Doctors and Nurses' Weight Biases Harm Overweight Patients, L.A. Times (Dec. 13, 2010), http://articles.latimes.com/2010/dec/13/health/la-he-the-md-weight-bias-20101213 (discussing negative health implications of stigma and bias by providers against obese and overweight patients).

sexually active or pregnant may create a hostile environment that could keep her from accessing needed reproductive health care.[10]

Discrimination in health care settings can be particularly pronounced when individuals identify with more than one protected class. For example, African American women generally receive lower quality medical services than White women, with disparities in early diagnosis of breast cancer and maternal death rates worsening in recent years.[11] In addition, the percentage of women reporting that their provider did not listen, explain things clearly, respect what they had to say, or spend enough time with them was higher among African American women than White women.[12]

Along with African American and undocumented individuals, many transgender and gender non-conforming individuals also report being verbally, and sometimes physically, harassed in medical settings.[13]

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[10] Texas Policy Evaluation Project, Barriers to Family Planning Access in Texas 1 (May 2015), http://www.utexas.edu/cola/txpep/_files/pdf/TxPEP-ResearchBrief_Barriers-to-Family-Planning-Access-inTexas_May2015.pdf (showing that 30% of respondents reported "Don't feel comfortable with healthcare providers" as a barrier to accessing reproductive health care.).

[11] Agency for Healthcare Research & Quality, U.S. Dep't of Health & Human Servs., AHRQ Pub. No. 13-0003, National Healthcare Disparities Report 2012 10-5 (2013), available at http://www.ahrq.gov/research/findings/nhqrdr/nhdr12/nhdr12_prov.pdf.

[12] Agency for Healthcare Research & Quality, U.S. Dep't of Health & Human Servs., AHRQ Pub. No. 12-0006-3-EF, Disparities in Healthcare Quality Among Minority Women: Findings from the 2011 National Healthcare Quality and Disparities Reports 6 (2012), available at https://archive.ahrq.gov/research/findings/nhqrdr/nhqrdr11/minority-women.pdf.

[13] Jaime M. Grant et al., Nat'l Ctr. for Transgender Equal. & Nat'l Gay & Lesbian Task Force, National Transgender Discrimination Survey Report on Health & Health Care 5-6

A 2010 study found that 70 percent of transgender respondents and nearly 56 percent of lesbian, gay, and bisexual respondents reported experiencing at least one instance of discrimination or patient profiling when attempting to access health services.[14] The negative impacts of such discrimination are striking: 48 percent of transgender and gender non-conforming individuals report postponing seeking care when sick or injured and 50 percent report postponing or avoiding preventive care." [15]

Patients often do not have much choice in providers or health systems. Indeed, most health insurance covers care for its insured that is limited to a network of providers. Thus, they are in effect a captive audience for services that can literally have life or death consequences.

Because of the potentially low monetary damages involved – one may be tempted to diminish the significance of discriminatory conduct in places of public accommodation. As this discussion about access to health care reveals, discrimination in the provision of services has implications beyond dignitary harm. Indeed, Mr. Floeting could not

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(Oct. 2010), available at http://transequality.org/PDFs/NTDSReportonHealth_final.pdf. *See also* Nat'l Ctr. for Transgender Equal., Report of the 2015 U.S. Transgender Survey, available at http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF (reporting survey results showing that in the past year, 23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person).

[14] Lambda Legal, When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV 5 (2010), available at http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf

[15] *Id*. at 76.

simply "shop" elsewhere for the services he needed, nor should the law require him to.

V. CONCLUSION

Our Legislature enacted public accommodation protections in 1957, just two years after Rosa Parks sparked the Montgomery bus boycotts. The protest surrounding mistreatment of African Americans in public-facing venues comprise the bedrock of our civil rights movement and assuredly informed the passage of Section 215 of the WLAD. And while discrimination in our coffee shops and doctor's offices may express itself differently today than it did 50 plus years ago, the evil of differential and dehumanizing treatment persists and continues to create barriers to participation in public life and in the marketplace. If we are to achieve "full enjoyment" for all Washingtonians, then the entities who open their doors to the public - and indeed, benefit from public patronage – must be held to account for the misconduct of their employees. *Amici* urge this Court to affirm the ruling of the Court of Appeals.

Respectfully submitted this 14th day of May, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, I caused a copy of the foregoing to be delivered via E-Mail and U.S. Mail, postage, pre-paid, to the attorneys of record listed below:

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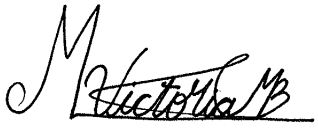
I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated: May 14, 2018 at Seattle, Washington.



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