No: 997403

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CATHERINE THORP,

Petitioner,

v.

NEW LIFE CHURCH ON THE PENINSULA,

Respondent.

NEW LIFE CHURCH'S ANSWER TO PETITION FOR REVIEW

Nathaniel L. Taylor, WSBA No. 27174
Peter B. Dolan, WSBA No. 48144
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101-1820
Telephone: (206) 682-0565
Fax: (206) 625-1052
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

Respondent New Life Church on the Peninsula respectfully requests that this Court deny review because this case does not meet any of the criteria in RAP 13.4(b). The Court of Appeals properly applied *Waggoner v. Ace Hardware Corp.*, 134 Wn.2d 748 (1998), where all nine justices of this Court held that "marital status" under the Washington Law Against Discrimination did not encompass cohabitation. Petitioner *never addresses* RAP 13.4(b); she simply re-argues the merits of her case—a public policy wrongful discharge claim based on marital status. New Life does not seek cross-review of the Court of Appeals' decision.

II. ISSUE

The threshold issue presented by Petitioner is whether the 9-0 result in *Waggoner* should be overruled. Unless *Waggoner* is overruled, the other issues raised by Petitioner are irrelevant.

III. STATEMENT OF THE CASE

New Life is a protestant Christian church that formerly employed Petitioner. It terminated her after she refused to stop cohabiting with her boyfriend in violation of the church's sincerely held religious beliefs. CP 207-08.

Ms. Thorp sued for wrongful discharge in violation of public policy, violation of the WLAD, and outrage. CP 2-11. The trial court

granted New Life's motion for summary judgment on all claims. CP 383-85. Petitioner moved for reconsideration, CP 386-89. The trial court denied her motion. CP 400.

Petitioner appealed the wrongful discharge in violation of public policy claim; she did not assign error to dismissal of her WLAD or outrage claims. Although she did not appeal her WLAD claim, Petitioner nevertheless relied on the WLAD as a basis for a public policy tort claim, citing *Bennett v. Hardy*, 113 Wn.2d 912 (1990).[1] The Court of Appeals upheld the trial court in an unpublished decision. *Thorp v. New Life Church on the Peninsula*, No. 53680-3-II, 2021 Wash. App. LEXIS 375 (Ct. App. Feb. 23, 2021) (the "Panel Decision").

The Panel Decision analyzed the WLAD as a separate claim rather than as a basis for a public policy tort claim. But it still came to the correct decision: *Waggoner* holds that cohabitation is not protected by the WLAD.

Like she did at the trial court, Petitioner moved for reconsideration. The Court of Appeals denied her motion. *Thorp v. New Life Church on the*

[1] In its response brief, New Life noted that Petitioner had not cited *Roberts v. Dudley*, 140 Wn.2d 58 (2000), which was more on point but still distinguishable.

Peninsula, No. 53680-3-II, 2021 Wash. App. LEXIS 847 (Ct. App. Apr. 12, 2021).

IV. ARGUMENT

A. Petitioner has not established—or even argued—a basis for review under RAP 13.4(b).

RAP 13.4 provides that a petition for review will be accepted by the Supreme Court *only* if: (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with a published opinion of the Court of Appeals; (3) there is a significant question of law under the Constitution of the State of Washington or of the United States; or (4) there is an issue of substantial public interest that should be determined by the Supreme Court.

Petitioner never explains why her petition meets one of the criteria under RAP 13.4(b). The first sentence of her conclusion incorrectly recites RAP 13.4(b)(3) (omitting the requirement that the "significant question" be a constitutional question). Her petition objectively fails the criteria in RAP 13.4(b)(1)-(3).

RAP 13.4(b)(4) is a subjective standard, "substantial public interest." But Petitioner never argues why her case involves an issue of substantial public interest that needs determination. She simply states that

the issues "should be of interest to the Court and of import to the citizens of our State." The reader is left to guess why.

Here's why not: regardless of the outcome of *any other issue* in the case, Petitioner's claim fails unless this Court were to overrule *Waggoner*. *Waggoner* was a 9-0 decision based on the plain language in the WLAD; even if the definition of marital status under the WLAD were of substantial public interest, the issue has already been determined by this Court.

B. Petitioner has not argued that *Waggoner* should be overturned.

Petitioner does not allege that *Waggoner* left a trail of invidious discrimination in its wake. She doesn't even ask this Court to overturn *Waggoner*. Instead, she just ignores it and alleges, contrary to the undisputed facts in the record,[2] that she was terminated based on marital status, not cohabitation. She cites no evidence in the record for her proposition; she just assumes it. The trial court has examined her arguments twice; the Court of Appeals has examined her arguments twice. She does not say where or why the lower courts went wrong.

---

[2] CP 214, 263.

C. The issue of overriding justification as an affirmative defense does not meet the criteria in RAP 13.4(b).

Petitioner asserts that New Life never raised the "overriding justification" affirmative defense to justify its termination of Petitioner. First, this issue is irrelevant if Petitioner cannot prove the other elements of a public policy tort claim. Because *Waggoner* is clear, she cannot. Second, even if this Court were to hold that overriding justification had to be pled as an affirmative defense, New Life did so. New Life's Answer states: "Plaintiffs' claims are barred in whole or in part because all of Defendant's actions with respect to Plaintiff were done in good faith and/or in a manner consistent with organizational necessity." CP 12–21. The fact that New Life did not use magic words "overriding justification" in its Answer does not invalidate its properly pled affirmative defense under CR 8's notice pleading standard. Finally, Petitioner has never argued this point previously and raises it for the first time on appeal.

V. CONCLUSION

The decisions of the trial court and the Court of Appeals were correct, as were their respective decisions to deny reconsideration. Petitioner does not argue any of the criteria in RAP 13.4(b) in her Petition for Review. New Life respectfully requests that this Court deny review.

DATED this June 4, 2021.

Respectfully submitted,

ELLIS, LI & McKINSTRY PLLC

/s/ Nathaniel Taylor

Nathaniel L. Taylor, WSBA No. 27174
Peter B. Dolan, WSBA No. 48144
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101-1820
Telephone: (206) 682-0565
Fax: (206) 625-1052
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I directed the Brief of Respondent to be served by e-filing on June 4, 2021, to the following:

Chalmers C. Johnson
Longshot Law, Inc.
PO Box 1575
Port Orchard, WA 98366
Attorney for Appellant

/s/ Kristine Mellin

ELLIS LI MCKINSTRY PLLC

June 04, 2021 - 9:38 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99740-3
Appellate Court Case Title:	Catherine Thorp v. New Life Church on the Peninsula
Superior Court Case Number:	17-2-02133-6

The following documents have been uploaded:

- 997403_Answer_Reply_20210604093353SC626933_6992.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was New Life Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- chalmers@longshotlaw.com
- chalmersjohnson@gmail.com
- pdolan@elmlaw.com

Comments:

Sender Name: Kristine Melin - Email: kmelin@elmlaw.com
Filing on Behalf of: Nathaniel Lee Taylor - Email: ntaylor@elmlaw.com (Alternate Email: kmelin@elmlaw.com)

Address:
1700 Seventh Ave
Suite 1810
SEATTLE, WA, 98101
Phone: (206) 682-0565

Note: The Filing Id is 20210604093353SC626933