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STATE OF WASHINGTON  
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Supreme Court No. 1025661  
Court of Appeals No. 84867-4

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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JEREMY DAVID & MARK SPRINGER,

*Petitioners,*

v.

FREEDOM VANS LLC,

*Respondents.*

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**PETITIONERS' ANSWER TO AMICUS CURIAE  
MEMORANDUM OF WASHINGTON EMPLOYMENT  
LAWYERS ASSOCIATION IN SUPPORT OF PETITION  
FOR DISCRETIONARY REVIEW**

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The Amicus Curiae Memorandum of the Washington Employment Lawyers' Association ("WELA ACM") elucidates several reasons why this Court should grant the unopposed Petition for Discretionary Review ("Pet.") filed in this case.

The court of appeals' decision eviscerates RCW 49.62.070's protection of the right of lower wage workers to hold economically necessary outside employment. WELA ACM at 1-2. WELA persuasively demonstrates that the court of appeals' construction of RCW 49.62.070 is at odds with the plain language of the statute. *Id.* at 6-8; see also Pet. at 13. The Legislature intended RCW 49.62.070(1)'s broad protection of lower wage workers' mobility to be the rule and the limitations set forth in RCW 49.62.070(2) to be narrow exceptions. WELA ACM at 7-8; see also Pet. at 10-11. The court of appeals' opinion has the exception swallowing the rule. WELA ACM at 8.

WELA shows that the impact of the court of appeals' erroneous decision is far from academic. It is impossible for many lower workers to attain a "Living Wage" unless they work

multiple jobs. *Id.* at 3-4. If allowed to stand, the court of appeals' opinion will severely restrict lower wage workers' ability to obtain second jobs. The hypothetical "Pepsi marketing executive" the court of appeals relied upon to reject Petitioners' interpretation of RCW 49.62.070 falls outside both the letter and purpose of the law. WELA ACM at 8-9; see also Pet. at 15-16.

The court of appeals' decision also "vastly expands and distorts the common law duty of loyalty." WELA ACM at 1-2. The court of appeals' holding that taking *any* second job with a competitor, even one with completely unrelated duties, violates the common law duty of loyalty is unsupported by precedent. *Id.* at 9; see also Pet. sec. II. Indeed, the court of appeals' opinion contradicts the basic principles of unfair competition upon which the court purported to rely. WELA ACM at 9-10.

The court of appeals failed to apply the *existing* common law duty of loyalty in Washington, as RCW 49.62.070(2) requires. That duty is founded on *Kieburtz & Associates, Inc., v. Rehn*, 68 Wn. App. 260, 842 P.2d 985 (1992), and Restatement

(Second) of Agency § 393. WELA ACM at 10-11; see also Pet. at 18-20. Instead, Division One radically expanded that duty through its unprecedented adoption of Restatement (Third) Agency § 8.04. WELA ACM at 11-14. As WELA explains, the duty of loyalty articulated in Restatement (Third) Agency § 8.04 is substantially broader than existing law. *Id.* at 12-13; see also Pet. at 26-28. Whether Washington should adopt Restatement (Third) Agency § 8.04, and the sea-change to the common law duty of employee loyalty that would entail, “deserves careful, thorough analysis.” WELA ACM at 13. That alone is an issue of substantial public importance warranting review by this Court. RAP 13.4(b)(4). See also Pet. at 18, 26-28.

Finally, WELA shows that the court of appeals’ failure to adhere to the legislature’s broad purpose in enacting RCW 49.62, set forth in RCW 49.62.005, and mandate of liberal construction, RCW 49.62.110, in the context of interpreting RCW 49.62.070 is reflective of a broader judicial misinterpretation of RCW

49.62. WELA ACM at 5-6. This is another issue of substantial public importance warranting review.

In sum, the WELA ACM strongly supports the grant of the *unopposed* Petition for Discretionary Review in this case.

*I certify that in Compliance with RAP 18.17(c)(9) that the foregoing contains 553 words not including the sections excluded by RAP 18.17(b).*

RESPECTFULLY SUBMITTED, this 7th day of February 2024.

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