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No. 97532-9

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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WASHINGTON STATE NURSES ASSOCIATION,

Respondent/Cross-Appellant,

v.

YAKIMA HMA LLC, d/b/a YAKIMA REGIONAL MEDICAL AND  
CARDIAC CENTER,

Appellant/Cross-Respondent.

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**BRIEF OF THE UNITED FOOD AND COMMERCIAL WORKERS  
LOCAL NO. 21, SEIU 1199NW AND AMERICAN NURSES  
ASSOCIATION,  
*AMICI CURIAE***

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## **I. IDENTITY AND INTEREST OF AMICI CURIAE**

The United Food and Commercial Workers Union, Local No. 21 (“UFCW 21”) represents more than 50,000 workers in retail, health care, and other industry jobs. Over 17,000 of its members work in the health care industry for employers such as Group Health Cooperative (now known as Kaiser Permanente), Children’s Hospital in Seattle, and many facilities operated by Providence Health System, including Sacred Heart Medical Center in Spokane. UFCW 21 represents the interests of its members by negotiating wages and conditions of employment as well as enforcing its members’ contractual rights. UFCW 21 advances the economic welfare of its members through collective bargaining and legislative and political activity.

SEIU Healthcare 1199NW (“SEIU 1199NW”) is a chartered Local of the SEIU International Union. SEIU 1199NW represents approximately 30,000 health care workers in Washington State in both acute and non-acute health care settings in Washington State. SEIU 1199NW advocates for economic, racial, and social justice in the workplaces and in the communities in which its members work and reside. It regularly enforces its members’ rights to meal and rest periods for all hours worked to ensure safe staffing, patient safety, and fair pay.

The American Nurses Association (“ANA”), is an organization founded nearly 125 years ago to advance the interests of nurses. ANA represents the interests of four million nurses in all 50 states and U.S.

territories. Its goal is to foster high standards of nursing practice, promote safe and ethical work environments, bolster the health and wellness of nurses, and advocate on health care issues that affect nurses and the public

UFCW 21 is a chartered member of UFCW International, which has over 1.4 million members working in North America. SEIU 1199NW is a chartered member of SEIU International, which has over two million members in North America, more than a 100,000 of whom work in Washington state. Together, SEIU 1199NW and UFCW 21 represent thousands of health care workers who will be directly affected by the Court's interpretation and application of the Washington Minimum Wage Act, Industrial Welfare Act, and Wage Rebate Act. ANA represents the interests of the approximately four million nurses throughout the United States including thousands of nurses in the state of Washington who will also be directly impacted by the Court's interpretation and decision in this case. Therefore, all three proposed amici organizations have a significant interest in the outcome.

## **II. ISSUES OF CONCERN TO AMICI CURIAE**

Amici address the following issues:

Whether the trial court correctly concluded that Appellant/Defendant violated RCW 49.12 and WAC 296-126-092, where the uncontested Findings of Fact ##14-18 are that Yakima HMA LLC, an acute care hospital in Yakima, Washington, failed to permit nurses a reasonable opportunity to take 30-minute uninterrupted meal breaks, that RNs ate "on the fly" while working, and that Appellant/Defendant created a workplace

culture that encouraged nurses to skip meal breaks and discouraged them from reporting missed breaks. (Assignment of Error #3).

### **III. INTRODUCTION**

The real question presented in this case is whether Washington's laws should be applied in a way to incentivize employers to willfully violate the law by chronically understaffing and creating a culture that discourages nurses from taking meal breaks and reporting all hours they work. As this state's legislature, agencies and courts have repeatedly and consistently held the laws were intended to prevent such conditions of labor.

This is, in part, because nurse fatigue is a threat to both public and worker safety. The class or associational standing available to workers enables them to remedy minimum labor standards in the state courts when they are impacted by willful employer violations and, in this case, concern for patient safety. *Amici Curiae* respectfully requests this Court to uphold the trial court's findings and conclusions and the judgment should be affirmed, except for Conclusion of Law #14, which should be reversed.

### **IV. STATEMENT OF THE CASE**

The trial court entered Judgment based on Findings of Fact and Conclusions of Law on April 23, 2018. Defendant Yakima HMA LLC, d/b/a Yakima Regional Medical and Cardiac Center (hereafter "Yakima HMA LLC") appealed to the Division III Court of Appeals raising six assignments of error. Plaintiff, Washington State Nurses Association (hereafter "WSNA") cross-appealed raising one additional assignment of

error regarding prejudgment interest. On July 22, 2019, the Court of Appeals of the State of Washington Division III determined the case should be transferred to the Supreme Court for consideration. On August 13, 2019, the Supreme Court certified the matter and transferred the case, in its entirety, to the Court for review. Amici accepts and adopts the Statement of the Case in Respondent/Cross-Appellant WSNA's Brief at pages 3-7.

## V. ARGUMENT

### A. Washington State Has a Long and Proud History of Protecting Workers from Oppressive Conditions of Labor.

The State's effort to protect employees from unsafe and oppressive conditions of labor is not new. Nearly 130 years ago the people of this State enacted a wage protection statute making it illegal to withhold wages from workers. *See Intn'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 42 P.3d 1265 (2002); RCW 49.48.030. In 1899 Washington "had a law requiring an eight hour workday." *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (200) (relying upon RCW 49.28) In 1913, a quarter century before the United States Congress passed a minimum wage law, the people of Washington made it unlawful to "employ any person ... under conditions of labor detrimental to their health; and ... to employ workers ... at wages which are not adequate for their maintenance." *Id.* That same year the State also created special protections for women and child labor. *See e.g., Larsen v. Rice*, 100 Wash. 642, 171 P. 1037 (1918).

While the effort to protect workers is not new, it is far from abandoned. More recently, this State passed a Family Care Act in 1989. RCW 49.12.270. Similarly, the state has recently passed the Washington Law Against Discrimination (RCW 49.60), banned smoking in public and private work places (RCW 70.160), passed a law requiring employers to provide most employees with paid sick leave (RCW 49.46.210), protected wages through the Wage Rebate Act (RCW 49.52), and protected employee privacy by banning pre-employment polygraph tests (RCW 49.44.120). Next year, additional protections specifically aimed at healthcare workers will take effect (amending RCW 49.28; RCW 49.12).

This Court has a long history of enforcing protections for workers. In 1918 this Court upheld the constitutionality of a minimum wage for women and children. *Larsen, supra*, 100 Wash. at 642-43. In 1936, the Court denied another challenge to the same statute ruling that “if it corrects a known and stated public evil ... it is a reasonable exercise of the police power-it is constitutional and it is a proper exercise of legislative power.” *Parrish v. West Coast Hotel Co.*, 185 Wash. 581, 593, 55 P.2d 1083 (1936).

In 1941, the Court broadly construed a statute that protected workers from being paid in company tokens and other forms of payment that were not redeemable for United States currency. *Smaby et al. v. Shrauger et al.*, 9 Wn.2d 691, 115 P.2d 967 (1941) (statute’s purpose was to allow workers to collect money owed in a timely manner so that they were free to pursue work elsewhere). In 1960, this Court held “the right of

the legislature to regulate hours and wages is not open to serious question.” *Peterson v. Hagan*, 56 Wn.2d 48, 54, 351 P.2d 127 (1960). In 1972, the Court once again protected children by ruling that it is the employer’s obligation to understand child labor laws. *Kness v. Truck Trailer Equipment Co.*, 81 Wn.2d 251, 254-55, 501 P.2d 285 (1972).

More recently, the Court upheld a law banning smoking in workplaces. *Am. Legion Post #149 v. Wash. State Dept. of Health*, 164 Wn.2d 570, 590, 192 P.3d 306 (2008). It liberally construed the provisions of the Washington Law Against Discrimination (WLAD) while narrowly defining its exceptions. *Hegwine v. Longview Fibre Co., Inc.*, 162 Wn.2d 340, 172 P.3d 688 (2007). In *Pulcino v. Federal Express Corp.*, 141 Wn.2d 629, 640, 9 P.3d 787 (2000), this Court ruled disparate treatment claims by a disabled employee are appropriate. Additionally, the WLAD has been ruled to prohibit discrimination in pre-employment inquiries. *Fahn v. Cowlitz County*, 93 Wn.2d 368, 374–75, 621 P.2d 1293 (1980).

Washington courts have broadly construed the Minimum Wage Act (MWA). In *Bostain*, interstate truck drivers were credited for hours worked outside the state for purposes of determining whether they were owed overtime. *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 711, 153 P.3d 846 (2007). In *Schneider*, the Court narrowly interpreted the “outside salesperson” exemption to the MWA so that route drivers were entitled to overtime pay. *Schneider v. Snyder’s Foods Inc.*, 95 Wash.App. 399, 976 P.2d 134 (1999). In 2000, the Court ruled in favor of workers who were improperly categorized as exempt. *Drinkwitz, supra*, 140 Wn.2d at 306.

Finally, the Court construed the MWA broadly enough to cover a contract ratification bonus that employer and union negotiators tied to the actual number of hours worked. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 867-68, 93 P.3d 108 (2004). As noted in *Drinkwitz* and *Hisle*, the Court should “render a result consistent with Washington’s long and proud history of being a pioneer in the protection of employee rights.” *Hisle*, *supra*, 151 Wn.2d at 883, *Drinkwitz*, *supra*, 140 Wn.2d at 300.

**B. Nurse Fatigue from inadequate rest and no meal breaks during work shifts is a threat to Worker and Patient Safety.**

This Court acknowledged that “rest periods help ensure nurses can maintain the necessary awareness and focus required to provide safe and quality patient care.” *Wash. State Nurses Ass’n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 832, 287 P.3d 516 (2012). And the Court is not alone as at least one Federal Court found “there is a significant amount of non-speculative evidence which identifies a connection between caregiver fatigue and patient well-being.” *Teasel v. Laskowski*, No. 17-cv-10987, 2017 U.S. Dist. LEXIS 206174, at 20 (E.D. Mich, Dec. 15, 2017) (where patient at mental health facility was found to have standing to challenge facility overtime rule after presenting “a number of studies, news stories, and expert opinions” including reports from a Michigan state task force finding that “extended work hours, mandated work shifts, and shifts that start during normal sleep hours have been associated with health care errors, as well as patient and nurse morbidity and mortality.”).

The courts are not alone in recognizing the safety issue related to nurse fatigue. A majority of nurses are concerned about their ability to provide

patient care safely.<sup>1</sup> The Institute of Medicine released one of the first studies in 1999 estimating that between 44,000 and 98,000 people die each year due to avoidable medical error.<sup>2</sup> Since then studies have found the Institute of Medicine's numbers to be too conservative. One John Hopkins study found medical error, behind only heart disease and cancer, as a leading cause of death in the United States.<sup>3</sup> Another study estimated 210,000 preventable deaths occur per year.<sup>4</sup>

Fatigue is not only a danger to the patients. Inadequate rest and meal breaks have immediate impacts on a worker's safety and wellbeing. Due to the physical demands of the job, nurses are at increased risk of sustaining musculoskeletal injuries, and a nurse's work schedule, which can include long shifts or working without breaks, is associated with an increased risk of neck, shoulder, and back musculoskeletal disorders.<sup>5</sup> In fact, the U.S. Bureau of Labor Statistics lists nursing as the sixth most at-risk occupation for strains and sprains.<sup>6</sup> The U.S. Centers for Disease Control and Prevention reports a link between length of working hours and nurses' increased risk for back disorders, odds for higher alcohol use,

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<sup>1</sup> Bird, J (2013). Survey: Nurse understaffing, fatigue threatens patient safety. FierceHealthcare.

<sup>2</sup> Kohn, Corrigan, Donaldson, *To err is human: Building a safer health system*, Institute of Medicine: Washington D.C.: Committee on Quality of Health Care in America (National Academy Press, 2000).

<sup>3</sup> Markary, M and Daniel, M, *Medical-error—The third leading cause of death in the U.S.*, (BMJ 2016) available at <https://doi.org/10.1136/bmj.i2139> as of 9-30-2019.

<sup>4</sup> James, J, *A new, evidence-based estimate of patient harms associated with hospital care*, JOURNAL OF PATIENT SAFETY, VOL. 9(3):122-8 (2013).

<sup>5</sup> Lipscomb, Trinkoff, Geiger-Brown, & Brady, *Musculoskeletal problems of the neck, shoulder, and back and functional consequences in nurses*, AMERICAN JOURNAL OF INDUSTRIAL MEDICINE, 41(3):170-8 (2002). See also Trinkoff, Le, Geiger-Brown, Lipscomb, & Lang, *How Long and How Much Are Nurses Working?* AMERICAN JOURNAL OF NURSING, 106(4), 60-71 (2006).

<sup>6</sup> Bureau of Labor Statistics News Release (November 19, 2015), *Nonfatal Occupational Injuries and Illnesses Requiring Days Away from Work, 2014*, Table 16.

increased smoking and higher risk for auto accidents.<sup>7</sup> Working long hours has also been associated with an increased risk of nurses receiving needlesticks.<sup>8</sup>

Nurse fatigue has been found to contribute to driving drowsiness, affects sleep patterns, and is linked to depression, anxiety, and health complaints.<sup>9</sup> A significant connection has been found between nurses' wellness, fatigue, and the opportunity to recover from fatigue.<sup>10</sup> Researchers have found a pressing need for steps to be taken to promote restorative breaks for nurses.<sup>11</sup>

**C. Class and associational standing enable health care workers and their unions to protect minimum labor standards and fight fatigue by ensuring employers provide required break time.**

It is a Washington employer's duty to meet or exceed the minimum labor standards. In *Demetrio*, this Court confirmed,

It is not enough for an employer to simply schedule time throughout the day during which an employee can take a break if he or she chooses. Instead, employers must affirmatively promote meaningful break time. A workplace culture that encourages employees to skip breaks violates WAC 296-126-092. ...

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<sup>7</sup> Caruso, Hitchcock, Dick, Russo, Schmit, *Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries and Health Behaviors*, CDC WORKPLACE SAFETY AND HEALTH, April 2004.

<sup>8</sup> Clarke, *Hospital Work Environments, Nurse Characteristics and Sharps Injuries*, AMERICAN JOURNAL OF INFECTION CONTROL, 35(5), 302-309 (2007); Trinkoff, Geiger-Brown, & Lipscomb, *Work Schedule, Needle Use, and Needlestick Injuries Among Registered Nurses*, INFECTION CONTROL AND HOSPITAL EPIDEMIOLOGY, 28(2), 156-164 (2007).

<sup>9</sup> Bahr, Buth, Martin, Peters, Swanson, Warhanek, Ryan, *White Paper: Nurse Scheduling and Fatigue in the Acute Care 24 Hour Setting*, Evidence Table I, at p. 19, citing Ruggiero, J.S., *Correlates of fatigue in critical care nurses*, RESEARCH IN NURSING & HEALTH, 26, 434-442 (2003).

<sup>10</sup> Steege, *Relationships between Wellness, Fatigue and Internship Recovery in Hospital Nurses*, Proceedings of the Human Factors and Ergonomics Society Annual Meeting, September 2014, Vol. 58, No. 1 778-782.

<sup>11</sup> Negati, Shepley, & Rodiek, *A Review of Design and Policy Interventions to Promote Nurses' Restorative Breaks in Health Care Workplaces*, SAGE JOURNALS (2016).

183 Wn. 2d at 658. *Accord Hill v. Garda CL Northwest, Inc.*, 198 Wn. App. 326, 394 P.3d 390 (Div. 1, 2017).

For health care workers, like the nurses in this case, when an employer fails to provide time for breaks, it is not just a matter of their own well-being but also the safety of their patients. Class and other forms of collective actions such as the associational standing vehicle used here allow nurses working at Yakima HMA LLC to effectively vindicate those rights by providing an effective means for adjudicating numerous, similar claims. “[A] primary function of the class suit is to provide a procedure for vindicating claims which, taken individually, are too small to justify individual legal action but which are of significant size and importance if taken as a group.” *Brown v. Brown*, 6 Wn. App. 249, 253, 492 P.2d 581 (1971).

**D. The Purpose of the MWA, IWA and WRA are Consistent.**

The Washington Minimum Wage Act (MWA), the Wage Rebate Act (WRA) and Industrial Welfare Act (IWA) are but three examples of this State’s history of protecting workers. The MWA protects workers by requiring employers to pay overtime for hours worked over 40 in a week. The WRA provides employees with a civil cause of action and additional damages when an employer deprives an employee of their wages. The IWA requires employers to provide at least a 10-minute rest break for every four hours worked. All three purposes indicate intent to advance the interests of workers and protect against certain labor practices.

The MWA was enacted to protect, “the immediate and future health, safety and welfare of the people of this state.” RCW 49.46.005. It

specifically applies to workers. Similarly, the IWA was enacted to protect employees “from conditions of labor which have a pernicious effect on their health.” RCW 49.12.010.

Clearly, any fair interpretation of the MWA and IWA is that they were enacted to protect Washington workers. Their purposes are similar. Both statutes, on their face, are concerned about “health.” Both statutes address conditions of labor. There are no inconsistencies of purpose and when read together the MWA and IWA (1) require rest breaks for every four hours of work, and (2) overtime to be paid for hours worked in excess of 40 per week. The WRA compliments the other two to require double damages and other remedies in some circumstances when an Employer deprives an employee of wages.

**E. Any Holding Should be Consistent with the Purpose of the Statutory Scheme and Underlying Public Policy Consideration.**

The trial court in this case made several decisions that further the public policy of deterring fatigue and promoting safe nursing practices in our health care settings. First, the trial court placed the burden on the employer to ensure nurses are afforded uninterrupted thirty-minute meal periods. Placing the burden on the employer to provide adequate meal periods as opposed to delegating that responsibility to the nurses is consistent with this Court’s decisions and makes it more likely nurses will actually receive the meal periods to which they are entitled. Assigning the obligation of ensuring meal periods are received by nurses to the employer promotes adequate scheduling for meal periods something nurses have no

power to accomplish themselves and which is absolutely essential to ensuring adequate rest and deterring dangerous fatigue.

Likewise, the trial court's decision to hold the employer accountable for failing to pay nurses wages due to them by applying available remedies for willful withholdings serves the very same interests in promoting nurse/patient safety. It incentivizes employers to act affirmatively to schedule sufficient nursing personnel to cover meal breaks and to pay for hours worked when ones are missed. The precise opposite result is inevitable if such remedies are not actually applied in cases like this one where the Yakima HMA LLC not only failed to pay for all hours worked but also discouraged nurses from taking meal periods or reporting ones they missed. In that factual situation, the employer actually comes out ahead by delaying the payment of wages for all hours worked. The trial court correctly applied the remedy the legislature provided for such willful conduct.

Lastly, the trial court's decision to permit this matter to be brought through WSNA's associational standing also promotes safe nursing practices by making it more likely nurses will receive payment for all hours they work. Specifically, like the class vehicle, associational standing opens the door for nurses to access the court system collectively to obtain payment for wages that have been wrongly withheld. Indeed, that is precisely what happened here. Nurses acted collectively through their bargaining representative to access the remedies the legislature specifically made available to them when they are not provided required

meal breaks. This way of bringing their claims to a court's attention was especially appropriate and necessary here because WSNA provided compelling evidence that the employer acted to suppress valid claims for hours worked.

## VI. CONCLUSION

On behalf of UFCW 21, SEIU Healthcare 1199NW and ANA, and for the reasons set forth above, Amici requests this Court uphold the trial court's findings and conclusions and the judgment should be affirmed, except for Conclusion of Law #14, which should be reversed.

Respectfully submitted this 30<sup>th</sup> day of September, 2019.



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I certify under penalty of perjury under the laws of the state of Washington that on the 30th day of September 2019, I served true and accurate copies of the foregoing

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