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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
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No. 97630-9

THE SUPREME COURT OF THE STATE OF WASHINGTON

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W.H.. et al.,

Plaintiffs,

v.

OLYMPIA SCHOOL DISTRICT,

Defendants.

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*AMICUS CURIAE* LEGAL VOICE'S  
STATEMENT OF ADDITIONAL AUTHORITIES

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## I. Statement of Additional Authorities

Pursuant to Washington Rule of Appellate Procedure 10.8, amicus curiae Legal Voice directs the Court to *Bostock v. Clayton County*, No. 17-1618, 590 U.S. \_\_ (2020), and particularly the following passage, as an additional authority relevant to this case:

[Title VII of the Civil Rights Act of 1964] tells us three times—including immediately after the words “discriminate against”—that our focus should be on individuals, not groups: Employers may not “fail or refuse to hire or . . . discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” §2000e-2(a)(1) (emphasis added). And the meaning of “individual” was as uncontroversial in 1964 as it is today: “A particular being as distinguished from a class, species, or collection.” Webster’s New International Dictionary, at 1267. . . .

The consequences of the law’s focus on individuals rather than groups are anything but academic. Suppose an employer fires a woman for refusing his sexual advances. It’s no defense for the employer to note that, while he treated that individual woman worse than he would have treated a man, he gives preferential treatment to female employees overall. The employer is liable for treating this woman worse in part because of her sex. *Nor is it a defense for an employer to say it discriminates against both men and women because of sex.* This statute works to protect individuals of both sexes from discrimination, and does so equally. So an employer who fires a woman, Hannah, because she is insufficiently feminine and also fires a man, Bob, for being insufficiently masculine may treat men and women as groups more or less equally. But in both cases the employer fires an individual in part because of sex. Instead of avoiding Title VII exposure, this employer doubles it.

*Bostock*, 590 U.S. \_\_, Slip Op. at 8–9 (emphasis added).

The *Bostock* decision is persuasive authority regarding the second certified question in this case, and in particular the Olympia School District's argument that the Washington Law Against Discrimination should not apply to this case because "conduct targeting both men and women is not based on sex, no matter how reprehensible." Def. Br. 6.

RESPECTFULLY SUBMITTED this 16th day of June, 2020.

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## Declaration of Service

I declare that on the date noted below I caused a copy of the foregoing *Amicus Curiae* Legal Voice's Statement of Additional Authorities to be served via the Washington Courts E-Portal:

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I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 16<sup>th</sup> day of June, 2020 at Seattle, Washington

/s/Chris Bascom  
Chris Bascom, Legal Assistant

**MACDONALD HOAGUE & BAYLESS**

**June 16, 2020 - 2:59 PM**

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