

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/20/2025 2:20 PM  
BY SARAH R. PENDLETON  
CLERK

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

Supreme Court No. 1037490  
Court of Appeals No. 57052-1-II

---

REYNALDO VERDUZCO,  
Petitioner,

v.

KING COUNTY,  
Respondent.

---

**RESPONDENT KING COUNTY'S RESPONSE TO  
WASHINGTON EMPLOYMENT LAWYERS  
ASSOCIATION'S AMICUS CURIAE MEMORANDUM  
UNDER RAP 13.4(h)**

---

LEESA MANION  
King County Prosecuting Attorney  
HEIDI JACOBSEN-WATTS, WSBA #35549  
PER JANSEN, WSBA #49966  
Senior Deputy Prosecuting Attorneys  
Attorneys for Respondent King County  
701 Fifth Ave, Ste 600 Seattle, Washington 98104  
(206) 477-1120  
Heidi.Jacobsen-Watts@kingcounty.gov  
Pjansen@kingcounty.gov

**TABLE OF CONTENTS**

|   |          |
|---|----------|
| <b>I. INTRODUCTION .....</b>  | <b>1</b> |
| <b>II. STATEMENT OF FACTS.....</b>  | <b>2</b> |
| <b>III. ARGUMENT.....</b>   | <b>2</b> |
| <b>A. WELA’S BRIEF FAILS TO PROVIDE A<br/>        MATERIAL ANALYSIS OF ITS OWN<br/>        INTERESTS, OR NEW ARGUMENT, AND<br/>        INSTEAD REHASHES ARGUMENT ALREADY<br/>        PRESENTED BY PETITIONER.....</b> | <b>2</b> |
| <b>B. WELA HAS NO COMPELLING, BROADER<br/>        INTEREST TO PRESENT IN A CASE<br/>        REGARDING MERE INSTRUCTIONAL<br/>        ERROR. ....</b>  | <b>4</b> |
| <b>C. WELA’S BRIEF IS WRONG ON THE MERITS...<br/>        .....</b>  | <b>6</b> |
| <b>IV. CONCLUSION .....</b>   | <b>6</b> |
| <b>V. CERTIFICATE OF COMPLIANCE.....</b>  | <b>6</b> |

## **TABLE OF AUTHORITIES**

### **State Cases**

*Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851,  
281 P.3d 289 (2012)..... 3

*Blomstrom v. Tripp*, 189 Wn.2d 379, 402 P.3d 831 (2017)..... 4

### **Federal Cases**

*Burlington Northern & Santa Fe Railway Co. v. White*, 548  
U.S. 53, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)..... 2

### **Statutes**

Title VII to the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et*  
*seq.* ..... 3

RCW 49.60 (Washington Law Against Discrimination ).. 3, 5, 6

### **Rules**

RAP 10.3 ..... 3

RAP 18.17 ..... 4

## I. INTRODUCTION

Amicus Washington Employment Lawyers Association (“WELA”) filed a brief in support of salvaging Petitioner Verduzco’s faulty verdict, which Division II correctly decided had been tainted by an erroneous instruction which improperly combined materially different definitions of “adverse employment action” and allowed the jury to find liability through an avenue which does not exist at law.

WELA argues that the error does not matter by invading the province of the jury and assuming that the jurors *must* have applied each and every competing definition of the term “adverse employment action” found in Instruction 8, despite not being instructed to do so.<sup>1</sup> This is contrary to the presumption of prejudice in the face of instructional error.

---

<sup>1</sup> And despite having a clear, contrasting example of when it *should* apply every element in an instruction. *See* Instruction No. 10, and King County’s Objection to WELA’s Motion for Leave to File Amicus Brief at 6 n.3.

Further, WELA breaks no new ground here, reifying arguments made before Division II and in the Petition for Review and King County's Answer. Its brief is a mere end-run around the word limits set by the appellate rules in attempt to bolster Petitioner's weak argument. WELA presents no compelling, individual interests in this litigation beyond a desire to preserve an erroneous verdict. Its brief should be disregarded.

## **II. STATEMENT OF FACTS**

King County relies upon the facts cited in its Answer to the Petition for Review.

## **III. ARGUMENT**

### **A. WELA's Brief Fails to Provide a Material Analysis of Its Own Interests, Or New Argument, and Instead Rehashes Argument Already Presented by Petitioner.**

WELA argues that, under dicta from a United States Supreme Court case,<sup>2</sup> this Court should assume that the jury here

---

<sup>2</sup> *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006). It is worth noting the *White* case applied definitions of "adverse employment action" that differ from the ones considered here;

conveniently applied an erroneous jury instruction in a manner precisely tailored to preserve Petitioner's verdict, in contravention of the law<sup>3</sup> and the record.<sup>4</sup> But even ignoring the obvious weaknesses in the argument, WELA's brief is extraneous. It does not raise any issue not already addressed by the parties in their Petition for Review or Answer in contravention of RAP 10.3(e) ("Amicus must review all briefs on file and avoid repetition of matters in other briefs."). *See* Verduzco's Petition for Review at 11-14; Respondent's Answer to Petition for Review at 12, 14-15.

---

applied Title VII, not the WLAD; and did not discuss prejudice from the jury instructions as a whole.

<sup>3</sup> *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 871-72, 281 P.3d 289 (2012) (prejudice is presumed from an adverse verdict resulting from instructional error).

<sup>4</sup> *See* Answer to Petition for Review at 14 (explaining that the error allowed the jury to find for Verduzco on his retaliation claim without considering whether his suspension was harmful to the point that it would dissuade a reasonable person from making a complaint of discrimination; and instead allowed them to erroneously consider whether it materially affected the terms, conditions, or privileges of employment).

Instead, WELA attempts to improve upon the arguments raised by Petitioner. The purpose of an amicus brief is to present the interests of the amicus, not to supplement the deficient briefing of a particular petitioner by filing more thorough briefing than petitioner's counsel.<sup>5</sup> WELA's brief is in effect an end-run of the word limit on Verduzco's Petition for Review set by RAP 18.17(c)(10).

**B. WELA Has No Compelling, Broader Interest to Present in a Case Regarding Mere Instructional Error.**

WELA's brief offers no convincing argument that this matter presents anything more than a routine issue of instructional error. Verduzco himself invited the error which he then benefitted from. The presumption of prejudice is reinforced by the factual record, which suggests the jury likely used the erroneous instruction to find a retaliation claim based solely on a

---

<sup>5</sup> See, e.g. *Blomstrom v. Tripp*, 189 Wn.2d 379, 411, 402 P.3d 831, 847 (2017) (in bringing a motion to file an amicus brief, the State was responsible for explaining its interest in the issue on which it hoped to offer guidance).

determination that his “suspension” “materially affect[ed] the terms, conditions, or privileges of employment”—i.e., an adverse employment action under the discrimination statute. *See* n.3, *supra* (citing King County’s Answer to Petition for Review at 14).

WELA has little to say beyond scrutinizing inapplicable case law, but notably suggests that it would be confusing to hold the instruction was erroneous. The rebuttal is simple: this Court should reinforce to trial courts that they must differentiate potentially confusing instructions, as contemplated by the Pattern Instruction. Failure to do so would encourage counsel in new cases to conflate causes of action and elements of jury instructions, and, contrary to controlling authority, merge over twenty years of distinct, settled law. To hold, as WELA would, that there is no error where a trial court does so would create the very WLAD policy confusion WELA claims to oppose.

Even if the issue were compelling, rather than reinstating the verdict, the Court here should instead allow Division II to



first consider the other issues raised by King County which entitle it to a proper trial. *See Answer to Petition for Review at 25-26.*

**C. WELA's Brief is Wrong on the Merits.**

As discussed in the briefing on Petitioner's Motion for Reconsideration, King County's Answer to the Motion for Reconsideration, and King County's Objection to WELA's Motion for Leave to File an Amicus Brief, WELA's position on the merits is wrong. The Court should reject this effort to assume the jury's intentions and disrupt settled WLAD jurisprudence.

**IV. CONCLUSION**

The Supreme Court should disregard WELA's brief and deny the Petition for Review.

**V. CERTIFICATE OF COMPLIANCE**

Pursuant to Rule of Appellate Procedure 18.17, I hereby certify that this document contains 968 words, exclusive of words contained in the title sheet, the table of contents, the

certificate of compliance, the certificate of service, and signature blocks.

Respectfully submitted this 20<sup>th</sup> day of March, 2025.

LEESA MANION (she/her)  
Prosecuting Attorney

/s/ Per Jansen

HEIDI JACOBSEN-WATTS, WSBA  
#35549

PER JANSEN, WSBA #49966  
Senior Deputy Prosecuting Attorneys  
Attorneys for King County

King County Prosecuting Attorney

701 Fifth Ave, Ste 600

Seattle, Washington 98104

(206) 477-1120

[Heidi.Jacobsen-Watts@kingcounty.gov](mailto:Heidi.Jacobsen-Watts@kingcounty.gov)

[Pjansen@kingcounty.gov](mailto:Pjansen@kingcounty.gov)

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen (18) years, not a party to or interested in the above-entitled action, and competent to be a witness herein. On the date below, I caused to be served *electronically via clerk's e-portal website* a copy of this RESPONDENT KING COUNTY'S RESPONSE TO WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION'S AMICUS CURIAE MEMORANDUM UNDER RAP 13.4(h) upon the following parties and their respective counsel at the e-mail addresses as shown below:

[susanmm@msn.com](mailto:susanmm@msn.com)  
[vonda@vsargentlaw.com](mailto:vonda@vsargentlaw.com)  
[phil@tal-fitzlaw.com](mailto:phil@tal-fitzlaw.com)  
[msubmit@frankfreed.com](mailto:msubmit@frankfreed.com)

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

SIGNED this 20<sup>th</sup> day of March, 2025 at King County, Washington.

/s/Rodrigo Fernandez  
Rodrigo Fernandez, Paralegal

**March 20, 2025 - 2:20 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,749-0  
**Appellate Court Case Title:** Reynaldo S. Verduzco v. King County, Washington  
**Superior Court Case Number:** 20-2-08046-8

**The following documents have been uploaded:**

- 1037490\_Briefs\_20250320134523SC943737\_6182.pdf  
This File Contains:  
Briefs - Respondents Reply  
*The Original File Name was 20250320 KCs Response to Amicus Curiae WELAs Brief.pdf*

**A copy of the uploaded files will be sent to:**

- Heidi.Jacobsen-Watts@KingCounty.gov
- christine@sbmlaw.net
- etomter@frankfreed.com
- matt@tal-fitzlaw.com
- msubit@frankfreed.com
- phil@tal-fitzlaw.com
- susanmm@msn.com
- vonda@vsargentlaw.com

**Comments:**

---

Sender Name: Rodrigo Fernandez - Email: rfernandez@kingcounty.gov

**Filing on Behalf of:** Per De Vise Jansen - Email: pjansen@kingcounty.gov (Alternate Email: )

Address:  
701 Fifth Avenue, Suite 600  
Seattle, WA, 98104  
Phone: (206) 477-1120

**Note: The Filing Id is 20250320134523SC943737**