NO. 1041080

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

HECTOR MARTINEZ and JOLAYNE HOUTZ, husband and wife, individually and as Co-Personal Representatives of the ESTATE OF SAMUEL H. MARTINEZ,

Appellants/Plaintiffs,

v.

WASHINGTON STATE UNIVERSITY, a subdivision of the State of Washington,

Respondent/Defendant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Sam Martinez died, abandoned on a fraternity-house couch, on November 12, 2019, following an alcohol-fueled hazing ritual. Sam was only a few months into his first year at Washington State University ("WSU").

The WSU fraternity Sam was pledging – Gamma Chi – and its dangerous history of alcohol violations, hazing, and other misconduct, were well known to WSU administrators, from WSU's President down through WSU's Center for Fraternity and Sorority Life ("CFSL") and Center for Community Standards ("CCS"). Despite knowing that Gamma Chi was out-of-control and its undergraduate leaders were unable – and unwilling – to address the rampant risks within their fraternity, WSU partnered with, formally recognized, and promoted Gamma Chi and its fraternity house, which WSU designated "University Approved Housing," to incoming students and their parents.

Just months before Sam was hazed at Gamma Chi's "live-out" house, Gamma Chi's president, only a sophomore himself,

admitted to WSU that the live-out put "the chapter at risk in multiple ways," and solicited "ideas, comments or suggestions" to "help reduce that risk." WSU ignored that plea, even after determining just days later that another WSU fraternity had hazed its pledges with alcohol at the same live-out.

Division I's holding that, under those facts, WSU had a special relationship with Gamma Chi and therefore a duty under *Restatement (Second)* § 315(a) "to use reasonable care to control Gamma Chi and to protect foreseeable victims" – including Sam – "from the harm caused by hazing," *Martinez v. WSU*, 33 Wn. App. 2d 431, 473, 562 P.3d 802 (2025), is well-grounded in this Court's § 315(a) jurisprudence, including *Volk v. DeMeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016), and *Barlow v. WSU*, 2 Wn.3d 583, 540 P.3d 783 (2024). The holding is also commensurate with the definite, established, and continuing relationship between WSU and Gamma Chi; the control WSU exercised over Gamma Chi, on- and off-campus; WSU's undertakings to promote, recognize, regulate, and profit from

Gamma Chi; and the risks WSU knew about, and had ample opportunity and ability to address, before Sam's death.

Far from conflicting with *Barlow*, Division I remained faithful to, and recognized it was "bound to follow," *Barlow. Martinez,* 33 Wn. App. 2d at 462. Yet, distinguishing *Barlow*, Division I correctly found the "relationship between WSU and Gamma Chi is unlike WSU's relationship with an individual student[.]" *Id.* at 469.

Division I persuasively addressed the separate, necessary question of whether a special relationship existed between WSU and Gamma Chi such that WSU had a duty to control or mitigate Gamma Chi's conduct under the specific facts of this case. Division I held that "the evidence shows that the nature of WSU's relationship with Gamma Chi was such that WSU had sufficient insight into the dangerousness of Gamma Chi's conduct, could identify its potential victims, and could exercise sufficient control over Gamma Chi to manifest a duty under" § 315(a). *Id*. at 466.

WSU manufactures "a virtually boundless new duty owed by universities and colleges" to justify seeking review. (WSU Pet. at 20.) While there is nothing "boundless" about Division I's holding, the same cannot be said for WSU's desire to hide behind Gamma Chi's college-aged, ill-equipped members to evade potential liability. The dangerous consequences of WSU's decision to treat Gamma Chi's members as the only ones with a duty to mitigate the risks of hazing are catastrophically clear.

This Court should reject WSU's request for permission to continue business as usual, deny WSU's Petition, and remand this case for trial.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does Division I's holding that WSU's "unique" and special relationship with Gamma Chi established a duty of reasonable care to control Gamma Chi and protect Sam from the foreseeable harms of hazing and alcohol misuse create a "boundless" duty or conflict with *Barlow v. WSU*?

2. If this Court grants review, should considerations of logic, common sense, justice, policy, precedent, including the principles reflected in the *Restatement of Torts*, and the "unique" relationship WSU formed with Gamma Chi by recognizing, regulating, and promoting the fraternity, provide that WSU owed Sam a duty to exercise reasonable care regarding the risks WSU knew Sam would encounter as a pledge?

III. RESTATEMENT OF THE CASE

A quarter of WSU's approximately 25,000 undergraduates participate in the roughly 65 Greek organizations on campus. CP 1283, 1295-1300. WSU has benefited financially from its robust Greek system: from 2009 to 2019, Greek organizations and affiliated alumni donated almost $105 million to WSU. CP 1070-71. Gamma Chi and its alumni donated nearly $4 million, CP 1066, 1070, while fostering a relationship so close that WSU's President celebrated in person at Gamma Chi's fraternity house renovation reveal in 2018. CP 1548-49, 1564.

WSU dedicated an entire department, the CFSL, to facilitate and support the needs of Greek organizations. CP 1074-76. CFSL employed five staff members to supply "[o]rganizational advocacy," advise Greek student leadership councils, offer leadership development opportunities, coordinate free use of CFSL space, and provide administrative support. CP 1198, 1991.

CFSL also promoted Greek life and housing to incoming students. CP 1198, 1991, 1253. In 2019, the CFSL: presented on the benefits of Greek life at orientation; distributed promotional materials lauding Greek life; and featured those materials on WSU's website, "GoGreek.wsu.edu." CP 1077-78, 1082, 1281-93, 1295-1300, 1326. CFSL provided fraternities recruitment resources, including incoming students' contact information, and allowed fraternities to utilize WSU's name and trademarks on their promotional media. CP 1198, 2112-13.

Because WSU permitted early recruitment, Gamma Chi began recruiting Sam the summer before his freshman year.

CP 851, 1198, 1971-73. In July 2019, Sam and his parents attended a New Student Orientation, where WSU presented on the purported – unqualified – benefits of fraternities. CP 851-52, 1986-87. This presentation impressed Sam's father, Hector; his mother, Jolayne, did additional research and still found nothing troubling on WSU's Greek life website about Gamma Chi or Greek life in general. CP 851-52, 1986, 2087-90.

Rather than containing warnings, WSU's Greek life website actively encouraged students to participate in Greek life, tying it directly to academic success:

> **Forget the stereotypes.** Living on Greek Row is fun, for sure, but you'll also be giving back to the community, gaining new leadership skills, and meeting new friends. You'll strive for academic excellence as well. In fact, WSU research shows that fraternity and sorority members are three times more likely than other students to graduate on time.

CP 9. After this research and further family discussions, Sam pledged Gamma Chi. CP 851-52, 1974, 1986; *see* CP 1982.

WSU knew that its official recognition of Gamma Chi, its promotion of Gamma Chi, and its failure to exercise the control it had over Gamma Chi would expose Gamma Chi pledges to an unreasonable risk of harm. That unreasonable risk of harm, which WSU helped to create, became a heartbreaking reality on November 12, 2019, when Sam died from acute alcohol intoxication after a "Big/Little" hazing event. CP 1337, 1571-72, 1994-98, 2001-02, 2028, 2035.

In July 2020, the Estate initiated a wrongful death lawsuit against WSU, and others. In opposing summary judgment, the Estate identified at least four sources for WSU's duty in this case: (1) a statutory duty under Washington's anti-hazing statute, RCW 28B.10.900 *et seq.*; (2) a duty under *Restatement (Second) of Torts* § 315(a) due to WSU's special relationship with Gamma Chi; (3) a protective duty consistent with *Restatement (Second) of Torts* § 315(b) and *Restatement (Third) of Torts* § 40 stemming from WSU's special relationship with Sam, an "emerging adult" who WSU knew, as a Gamma Chi pledge, was particularly

susceptible to fraternity hazing; and (4) a duty arising out of WSU's affirmative acts and omissions related to Gamma Chi, including promoting, recognizing, and regulating the fraternity, consistent with *Restatement (Second) of Torts* § 302B. CP 831-42.

The Superior Court granted summary judgment, and the Estate appealed. CP 2118-19, 2121. After oral argument, this Court decided *Barlow*, where it rejected § 315(a) and (b) claims, finding WSU had an insufficient relationship with the perpetrator, Culhane, under § 315(a), and that as an adult and college student, Barlow was not vulnerable under § 315(b)**,** as interpreted in *Turner v. Department of Social & Health Services*, 198 Wn.2d 273, 493 P.3d 117 (2021). *Barlow* held "a special relationship exists between a university and its students," but that a university's duty "to use reasonable care as recognized in *Restatement (Second)* § 344 … is limited to where a student is on campus for school related purposes or participating in a school activity." *Barlow*, 2 Wn.3d at 597.

Division I requested supplemental briefing addressing the impact of *Barlow* on this case. Division I's resulting opinion found a special relationship under § 315(a), specifically distinguishing *Barlow*. Division I also rejected the Estate's other arguments that WSU owed a duty on other grounds, and denied WSU's Motion to Reconsider.

IV. ARGUMENT

A. Division I Correctly Held WSU Had a "Unique" and Special Relationship with Gamma Chi under § 315(a)

1. Section 315(a) Is Not Limited to an Actor's Relationship with a "Natural" Third Person

In its scramble to find an error in Division I's holding, WSU argues, for the first time, that "Section 315(a) is specifically limited to an actor's relationship with a 'person' not an entity," and that "person" means only "a human being." (WSU Pet. at 22.) But the drafters of the Restatement did not limit 315(a)'s reach to matters involving the conduct of "human beings," a term they used in other Restatement sections, but not

Section 315. *See, e.g., Restatement (Second) of Torts* § 283, cmt. b, § 290.

Moreover, the dictionary defines "person" to mean "human being, a body of persons, or a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1686 (56th ed. 2020). And, "[a]lthough 'person' often refers to an individual human being, 'its meaning varies within the RCW' in distinct legal contexts and for particular purposes." *State v. Evans*, 177 Wn.2d 186, 194, 298 P. 3d 724 (2012) (citation omitted). One context is the Criminal Code, where "person" includes "where relevant, a corporation, joint stock association, or unincorporated association," RCW 9A.04.110(17), like Gamma Chi.

WSU's constrained reading of "third person" is incompatible with the distinct legal and factual context of this case. Section 315(a) "is an exception to the general common law rule of nonliability for the criminal or tortious acts of third

parties." *Volk*, 187 Wn.2d at 262. Prior cases interpreting § 315(a) have therefore unsurprisingly involved criminal or tortious acts by natural persons since, generally, most crimes and torts resulting in physical injury are committed by individuals.

But, as Washington recognizes, hazing is a rare crime involving the risk of personal injury and death that, by its very nature, is organizational-based and driven. At the time of Sam's hazing and death, Washington's anti-hazing law prohibited both students *and* "[a]ny organization, association, and student living group," from participating, permitting, or conspiring to engage in hazing, which it defined, in pertinent part, as "any method of initiation ***into a student organization or living group***, or any pastime or amusement engaged in ***with respect to such an organization or living group*****"** that causes harm. RCW 28B.10.901 (emphasis added). Further, WSU's Safety Regulations prohibited students ***and*** "recognized or registered student organization[s]," like Gamma Chi, from "conspir[ing] to engage" or "participat[ing] in the hazing of another," including

"***any activity expected of someone joining a group (or maintaining full status in a group)***" that causes harm. WAC 504-26-206 (emphasis added).

Here, while the hazing and related misconduct that resulted in Sam's death was undisputedly "criminal," (WSU Pet. at 13), it was also undisputedly perpetrated by Gamma Chi, not a lone individual, against pledges seeking membership in Gamma Chi during a fraternity-wide event. And hazing within WSU-recognized fraternities was organizational conduct that WSU undisputedly had the authority to regulate and control, and frequently undertook to do so.

From at least 2013, when a last-minute reprieve from WSU's President saved the fraternity from a statutorily-mandated loss of recognition, through the fall of 2019, WSU routinely (albeit negligently) investigated Gamma Chi—as an organization—for hazing- and alcohol-related violations of WSU's Community Standards and the Relationship Agreement ("RA") and University Approved Housing Standards Agreement

("UAH") WSU entered into with Gamma Chi. *See, e.g., Martinez*, 33 Wn. App. 2d at 441-446.

After Sam's death, WSU again investigated Gamma Chi, which conceded it was complicit in the hazing that led to Sam's death. CP 592-594. Thus, while WSU's lawyers would like to treat this case as one that arises out of the "criminal conduct of Oswald, a student member of Gamma Chi," alone, (WSU Pet. at 21-22), WSU itself has always recognized that Sam's hazing and death were the result of fraternity-wide misconduct and traditions, which WSU repeatedly failed to address. WSU's specious attempts to reframe the facts to match those of *Barlow* underscore the critical distinctions between the cases, including the nature and degree of control WSU had over the perpetrators and the settings and context of the crimes at issue.

2. WSU Had More Than Sufficient Ability to Control Gamma Chi to Give Rise to a Duty Under § 315(a)

WSU mischaracterizes the nature and degree of control sufficient to create a special relationship and attendant duty

under § 315(a). That WSU might not have had an unfettered "ability to proactively control the way the fraternity operates inside a private, off-campus residence," (WSU Pet. at 29), merely raises the relevant question. As this Court has made clear, "absolute control is unnecessary." *Volk*, 187 Wn.2d at 265-66. Rather, a special relationship can exist under § 315(a) where, as here, there is "*some* ability to "control' the third person's conduct." *Id.* at 264 (emphasis added). As Division I correctly found, WSU had more than sufficient ability to control Gamma Chi to give rise to a special relationship under § 315(a). *Martinez*, 33 Wn. App. 2d at 470-73.

a. The RA and UAH Gave WSU the Ability and Responsibility to Control Gamma Chi's Activities

WSU continues to gloss over the various mechanisms it had to control and regulate Gamma Chi's conduct. WSU could exert control through numerous requirements, rules, and conditions, including those set forth in the RA and UAH and its authority and obligation to closely monitor, investigate, and

discipline the fraternities it recognized, including Gamma Chi, for non-compliance, both on- and off-campus. CP 1194-95, 1198-1213.

It is undisputed that, in addition to the CCS, the CFSL—*the department charged with advocating on behalf of WSU-recognized fraternities*—regularly investigated Gamma Chi, including in the spring of 2017, when CFSL's director notified Gamma Chi's national organization of a "quite concerning" report of hazing involving Gamma Chi and offered to share information and "partner with" the national organization during the investigation. CP 1105, 1444, 1088-89.

WSU is wrong that its (undisputed and uncontested) ability and authority to closely monitor, investigate, and impose consequences on Gamma Chi for violations are not evidence of control. (WSU Pet. at 25-26.) Division I correctly recognized that "WSU had the ability to regulate Gamma Chi's conduct to prevent injury." *Martinez*, 33 Wn.App. 2d at 471. Similar to the psychiatrist in *Volk*—who had the ability to undertake "a number

of preventive measures" in the outpatient setting, including monitoring compliance with medication and of the patient's mental state, *Volk*, 187 Wn.2d at 265, 265 n.12—WSU had the ability to regulate Gamma Chi's conduct to change behavior and prevent recurrences by: closely monitoring Gamma Chi's compliance with the RA and UAH; investigating alleged violations; and imposing consequences for confirmed violations. *Id*. at 471-72.

3. The "Disclaimer" in the RA neither Legally nor Factually Impacts WSU's Duty

WSU clings to disclaimer language in the RA. Whether a tort duty exists is a question of law fora the Court, not one a defendant can preemptively resolve in its favor through third-party agreements to which potential plaintiffs are not parties. Agreements, like the UAH and RA, do not trump common law tort duties. *See, e.g., Afoa v. Port of Seatle*, 176 Wn.2d 460, 478-79 (2013) ("Calling the relationship a license does not change reality … the safety of workers does not depend on the formalities of contract language.").

WSU's reliance on the RA's disclaimer to hide behind the entity whose harmful activities it had a duty, but failed, to control is also ironic, at best. WSU has long known that it could not rely on Gamma Chi to comply with the RA or educate its members or pledges on it. For example, in sanctioning Gamma Chi in 2013 for hazing its pledges and providing its underage members alcohol in 2012, WSU's review board stressed Gamma Chi's "reckless" "failure to inform member and pledges of the rules outlined in the [RA]." CP 1383. Nonetheless, WSU continued to recognize Gamma Chi gave Gamma Chi direct access to Sam before he even stepped on campus.

4. The "Live-Out" Was a Known and Integral Part of Gamma Chi's Activities, within WSU's Ability to Control

The power to address known risks derived from, among other things, WSU's code of conduct, which applies "to conduct that occurs off university premises." WAC 504-26-015. In fact, when asked how WSU would respond to reports of violations at

a live-out, WSU's former CCS Director did not distinguish between on- or off-campus misconduct:

> Just like we would any off-campus behavior ... we would ... determine whether or not there were students or student organizations that were responsible for violating the WACs and then impose educational sanctions as appropriate.

CP 1243. WSU's current CCS Director concurred:

> My office can respond to reported violations *that occur off campus* if they create safety concerns ... or if they impacted the reputation of the university negatively ....

CP 1314 (emphasis added). She also admitted that "most of [CCS's] investigations" concern "behavior that occurs at *private residences, off* campus or in close proximity to campus," CP 1313 (emphasis added), while WSU's CFSL Director conceded that events at live-outs fall within the CFSL's "sphere of concern." CP 1098.

Thus, WSU's argument that "there is no evidence in the record that the University knew of [the "Big/Little" event] until after Martinez's death," (WSU Pet. at 11-12), is a distraction. Whether Gamma Chi's actions on that specific night were

factually foreseeable is a question for the jury. *Volk*, 187 Wn.2d at 275. And, as to legal foreseeability, "[i]ntentional or criminal conduct may be [legally] foreseeable unless it is 'so highly extraordinary or improbable as to be wholly beyond the range of expectability.'" *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 50, 929 P.2d 420 (1997) (quoting *Johnson v. State*, 77 Wn.App. 934, 942, 894 P.2d 1366 (1995)).

Here, even if the details of the Big/Little event were unknown to WSU, WSU undisputedly knew about the risks in the live-out in Fall 2019, including the specific risk that pledges would be hazed there with alcohol, and had the power and authority to address those risks.

Rather than hiding those "risks," Gamma Chi's president alerted WSU to them, conceded he was not equipped to manage them, and asked for help. And just days after that plea, in September 2019, WSU revoked the recognition of another WSU-recognized fraternity for hazing its pledges with alcohol *at the*

same live-out, but later rescinded that sanction and imposed only further education. CP 1315-16. 1745-46, 1749-52, 1756-57.

5. Division I's Decision Does Not Conflict with this Court's Precedent and Is Not An Outlier

Division I's holding is well-grounded in this Court's § 315(a) jurisprudence, including *Barlow*, and it does not portend "expansive liability on universities and colleges," as WSU insists. (WSU Pet. at 30.) Washington has applied § 315(a) in numerous cases. *See Volk v. DeMeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016) (outpatient counselor); *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422, 378 P.3d 162 (2016) (registered sex offender student and school); *N.K. v. Corp. of Presiding*, 175 Wn. App. 517, 307 P.3d 730 (2013) (volunteer scout leader and LDS church); *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262 (1999) (Catholic church and priest); *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 929 P.2d 420 (1997) (nursing home staff); *Petersen v. State*, 100 Wash.2d 421, 671 P.2d 230 (1983) (psychiatrist patient).

The factors determining whether the duty exists under § 315(a) are a continuing relationship, unique knowledge into the risk, and the ability to control or mitigate the conduct at issue. *Martinez*, 33 Wn. App. 2d at 465-66 (citing *Volk*, 187 Wn.2d at 256). Division I found a "unique" and continuing relationship between WSU and Gamma Chi dating back to when WSU first recognized the Chapter in May 1911. *Id*. at 440.

Gamma Chi voluntarily entered the recognition program, receiving access to WSU facilities, organizational and recruiting activities, university-sponsored training and events, and use of WSU's name and trademarks. *Id.* at 467-68. As a recognized fraternity, first year students could live at Gamma Chi's fraternity house, thus providing the fraternity an invaluable recruiting tool and a stable source of income. *Id.* at 468. WSU assisted with recruiting, met regularly with Gamma Chi, and partnered with the fraternity to (purportedly) address problems. *Id.*

Division I recognized that because WSU had the "ability to regulate Gamma Chi's conduct to prevent injury from hazing," it had a "a duty to use reasonable care to control Gamma Chi and to protect foreseeable victims from the harm caused by hazing," *Id.* at 471, 473. That holding is faithful to this Court's precedent. *See, e.g.*, *Barlow*, 2 Wn.3d at 593 ("in order for a special relation under *Restatement (Second)* § 315(a) to exist, the ability to control the third party must exist") (citing *Volk*, 187 Wn.2d at 264).

Nor is Division I's holding an outlier. In *Halmon v. Lane College*, the Tennessee Court of Appeals held that where—as here—a university is "aware of significant risks connected to" a recognized fraternity, the university has a duty to "conform to the reasonable person standard of care in order to protect against unreasonable risks of harm" involving the fraternity. No. W2019-01224-COA-R3-CV, 2020 WL 2790455. 2020 Tenn. App. LEXIS 255, at *18-23 (Tenn. Ct. App. May 29, 2020) (unpublished).

In reaching that holding, the *Halmon* court cited favorably to *Morrison v. Kappa Alpha Psi Fraternity*, where the Louisiana Court of Appeals held that "universities which allow and regulate fraternal organizations have a duty toward their students to act within reasonable bounds to protect against illegal and proscribed hazing." 738 So. 2d 1105, 1115 (La. Ct. App. 1999). The *Morrison* court also held that "because of the prior knowledge and serious nature of hazing [with the fraternity at issue], social policy justifies a special relationship between the University and its students in this particular instance." *Id.*

Those decisions reaffirm the soundness of Division I's holding and the public interest in recognizing a university's duty to exercise reasonable care to protect against unreasonable risks of harm from university-recognized fraternities, particularly ones, like Gamma Chi, with known histories of dangerous misconduct. And, to the extent this Court deems it appropriate to grant review, those decisions also emphasize that considerations of logic, common sense, justice, policy, and precedent, with

"reference to the principles reflected in *Restatement of Torts*," *Barlow,* 2 Wn.2d at 589, together with the "unique" relationship WSU formed with Gamma Chi, favor a finding that WSU also owed Sam a duty to exercise reasonable care with regard to the risks WSU knew or should have known Sam was likely to encounter while pledging Gamma Chi.

B. There Is a Substantial Public Interest In Determining whether "Logic, Common Sense, Justice, Policy, and Precedent" Dictate that WSU Owed Sam, a Vulnerable Fraternity Pledge, a Duty of Care

To decide if the law imposes a duty of care, courts weigh "'considerations of logic, common sense, justice, policy, and precedent.'" *Snyder v. Med. Serv. Corp. of E. Wash.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001) (internal quotation marks omitted). "'Duty' is not sacrosanct in itself but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." PROSSER AND KEETON ON THE LAW OF TORTS§ 53, at 357-58 (5th ed. 1984), cited in *Volk*, 187 Wn.2d at 263.

In *Barlow*, this Court held that a special relationship exists between a university and its students. The *Barlow* majority anchored the relationship in *Restatement (Second)* § 344, measured by a "student's enrollment and presence on campus or participation in university controlled activities." *Barlow*, 2 Wn.3d at 597-98.

The *Barlow* dissent posited that the scope of the duty should depend on the nature of the relationship and the foreseeability of danger, not campus borders. The dissenting justices relied in part on *Restatement (Third) of Torts*, § 40, the changing relationship between universities and students, "the significant shift in knowledge over the last few decades regarding the dangers of sexual assault and alcohol and other substance use at universities," the University's tools to address issues through the Student Conduct Code, and the University's avowed commitment to "holistic" growth. *Id.* at 605-08. Under the dissent's analysis, the scope of the duty would be "bounded

by the extent of the undertaking" of the University and is not "limitless." *Id.* at 626.

There is a substantial public interest in this Court accepting review to decide the scope of the duty between a university and its students seeking membership in fraternities recognized, promoted, and regulated by the university, considering, among other factors, the extent of the relationship, the university's unique knowledge of the risks, the particular vulnerability of young college students seeking fraternity membership, the degree to which the university promotes and controls the fraternities, and legislative intent.

The relationship between WSU and its recognized fraternities incorporates all these factors. WSU confers many benefits on fraternities via recognition. WSU promotes, sponsors, and endorses fraternities on the basis they are important to the overall educational experience. This aspect of the relationship fits within *Barlow*'s § 344 "school sponsored activity" framework, the long, continuing relationship analysis

under § 315(a), and/or the §302B affirmative acts creating a risk of harm factor. Fraternities exist and continue to be a defining feature of many college students' lives because of their connection to universities.

Students entering college are further along the continuum of maturity and judgment than high school students to whom schools already owe a protective duty, *N.L.*, 186 Wn.2d 422, but they do not magically become adults on their 18th birthday. While WSU's attorneys repeatedly refer to Gamma Chi's members as "adult student(s)," outside of this litigation, WSU defines an "adult student" as "students who are 25 years of age or over." [1] Though "*parens patriae*" has been discarded, universities are entrusted to keep students safe within the university setting. And students seeking fraternity membership are particularly vulnerable.

[1] *See* https://registrar.wsu.edu/media/fzepa10r/admission.pdf.

The Louisiana Court of Appeals succinctly detailed the acute vulnerability of that class of students in *Morrison*:

> [O]ur legislature and universities have sought to reform a hazing tradition that has too often led to tragedy. As a matter of policy, hazing has been prohibited. This is rooted in an understanding that youthful college students may be willing to submit to physical and psychological pain, ridicule and humiliation in exchange for social acceptance which comes with membership in a fraternity.

Morrison, 738 So. 2d at 1115. The prohibition of consent-based defenses to hazing in WSU's Safety Regulations is rooted in that same understanding, WAC 504-26-206, as is Washington's anti-hazing statute, RCW 28B.10.900 *et seq*., which WSU encouraged the legislature to pass "to protect students" from the "serious injury and even death" that "has occurred as a result of hazing of this kind." S.B. Rep. on S.B. 5075, 53rd Leg. Reg. Sess. (Wash. 1993) at CP 2045.

More than three decades have passed since Washington enacted its anti-hazing statute, and hazing, and serious injuries and death caused by it, remain a persistent reality. Thus, as the facts here make resoundingly clear, there is a substantial public

interest in this Court clarifying that universities have a duty to protect their students who pledge the fraternities those universities recognize, promote, and regulate. WSU had extensive special knowledge about the risks involved for students pledging fraternities generally, and Gamma Chi in particular. WSU knew Gamma Chi regularly condcuted fraternity rituals involving alcohol and hazing. WSU hid this knowledge from prospective students and their families, and instead positively portrayed Greek life.

WSU had multiple tools to impact Gamma Chi's pattern of hazing, none of which it used. Enforcement of the UAH was a powerful tool because Gamma Chi had significant monetary incentives to keep its fraternity house full. WSU could have escalated sanctions for Gamma Chi's violations under the Student Conduct Code, the RA, and the UAH. A jury could find WSU should have taken these actions but did not, because of the cozy relationship between WSU and the Greek system.

Finally, the anti-hazing statutes and regulations authorizing and dictating the sanctions for hazing demonstrate the public interest in proactively enforcing the rules to reduce hazing, which WSU failed to do until after Sam needlessly died. Considering all these sources together, if the Court grants review, it should find a protective duty to Sam and reverse Division I's holdings to the contrary.

V. CONCLUSION

This Court should deny WSU's Petition or, alternatively, grant review to separately decide whether WSU owed Sam a duty to exercise reasonable care with regard to the risks WSU knew or should have known Sam was likely to encounter while pledging Gamma Chi.

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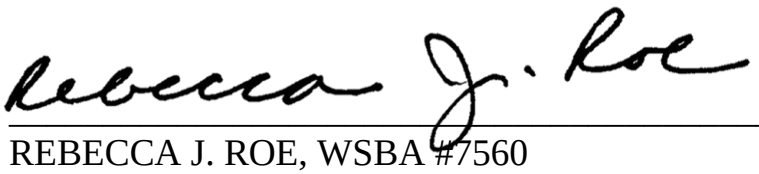
RESPECTFULLY SUBMITTED this 28th day of May, 2025.

I certify that this document contains **4,920** words in compliance with the RAP 18.17.

SCHROETER, GOLDMARK & BENDER



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