No. 1042329

SUPREME COURT

OF THE STATE OF WASHINGTON

SARA HUTCHINSON,

Petitioner,

vs.

ED PUTKA,

Respondent.

REPLY TO

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Petitioner Sara Hutchinson "Hutchinson" respectfully submits this Reply under RAP 13.4(d), responding only to new issues raised in Respondent Ed Putka's "Putka" Answer to the Petition for Review.

ARGUMENT AGAINST ANSWER

A. RESPONDENT MISCHARACTERIZES THE RECORD AND PROCEDURAL HISTORY

(This section addresses new factual characterizations introduced in Respondent's Answer, particularly the assertion that the initial denial of summary judgment was based on vague pleadings.)

Putka asserts that the record materially changed between the initial and renewed motions for summary judgment. However, the Court of Appeals acknowledged that the trial court's reversal was made on a record "substantially the same." The few additions—primarily a second deposition and a self-

serving declaration—did not negate the existence of disputed issues of fact that had previously precluded summary judgment. The trial court did not identify new material evidence or law as the basis for reversal, effectively permitting a second motion without justification under CR 56 or *White v. State*, 131 Wn.2d 1 (1997). The trial court offered no rationale based on newly discovered evidence or changes in law. This violated the rule articulated in *White v. State*, 131 Wn.2d 1, 14–15 (1997), which permits renewed summary judgment only when the movant presents new material facts or legal authority not available at the time of the original motion.

Moreover, Putkas' attempt to reframe the trial court's initial denial of summary judgment as a cautious reaction to vague pleadings is unsupported by the record. Hutchinsons' complaint and briefing clearly asserted claims under RCW 49.60.030, .222, and .2235, with detailed factual allegations of discriminatory and retaliatory conduct. WLAD must be liberally construed to serve its remedial purpose. See *Xieng v.*

Peoples Nat. Bank, 120 Wn.2d 512 (1993). The argument that the trial court was simply indulging unclear pleadings is a new and unsupported claim that misrepresents the procedural history.

In fact, the trial court explicitly stated on the record that Hutchinson's discrimination claim raised a factual question suitable for the trier of fact—a statement which directly rebuts Respondent's newly asserted narrative in the Answer. The court said: suitable for the trier of fact. The court said:

" The discrimination claim, we have action that was taken that was negative to the Plaintiff in the form of her lease…. And what motivated that action, whether it was a good faith action to evict someone for having an unlawful business in a building; or, if that was motivated because of the status of the mental disability, or veteran status mental disability, service related disability…..Service related disability…..that would seem to be more of a question for a fact, for quite a trier of fact to reason out after hearing the information. So, I'm not dismissing that cause." (Transcript, p. 38).

This directly contradicts Putka's assertion that the trial court dismissed the WLAD claim due to vague pleadings or

caution and underscores the presence of genuine issues of material fact that required a jury trial.

B. RESPONDENT MISSTATES PETITIONER'S BURDEN UNDER WLAD

(This section responds to a new assertion made in the Answer—that Petitioner's evidence was conclusory or weak—which misstates the applicable burden under WLAD and Washington summary judgment standards.)

Putka argues that Hutchinson presented only conclusory or weak evidence. This misstates the applicable summary judgment standard. Under *Scrivener v. Clark College*, 181 Wn.2d 439 (2014), and *Mikkelsen v. PUD No. 1*, 189 Wn.2d 516 (2017), circumstantial evidence and reasonable inferences are sufficient to defeat summary judgment.

Washington courts apply the *McDonnell Douglas* framework in WLAD cases but require that it be flexibly applied consistent with the statute's remedial purpose. See *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 103–04 (1994). Hutchinson presented:

- A marked shift in Putka's behavior after learning of her veteran status, PTSD, and use of VA benefits.
- Threats of eviction, professional licensing complaints, and public disparagement;
- Removal of a VFW support plaque based on false equivalency to political signage;
- A rescission demand shortly after learning about her protected status;
- A withheld second page of the backup offer, which may have revealed an attempt to avoid a VA loan.

These facts are not speculative; they are part of a pattern of adverse actions closely following protected disclosures. This is precisely the kind of circumstantial showing that precludes summary judgment under Washington law.

Shifting explanations for adverse treatment, such as alternating between lease violations and allegations of fraud, support an inference of discriminatory motive and should be

resolved by the trier of fact. See *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 181–83 (2001).

C. RESPONDENT MISATTRIBUTES FAULT FOR DISCOVERY GAPS TO PETITIONER

(This section responds to a new argument raised in the Answer—that Hutchinson is to blame for the missing page of the backup offer—an assertion not previously presented and contrary to the discovery record.)

Putka argues that Petitioner failed to obtain the full backup offer and should be blamed for the missing page. This mischaracterizes the discovery history. Hutchinson requested full documentation, but Putka produced only the first page. The missing page, which would have revealed the financing type, was never disclosed.

It is improper to penalize a party for another's failure to comply with discovery obligations. Under *Scrivener* and *Mikkelsen*, all inferences must be drawn in favor of the nonmovant, particularly in discrimination cases. The missing

evidence should have weighed against the moving party on summary judgment, not the opposing party.

D. RESPONDENT RAISES UNFOUNDED ALLEGATIONS OF FRAUD

(This section addresses a new argument raised in the Answer—allegations of fraud or lying by Petitioner—which were not part of the prior briefing and therefore properly responded to here.)

Putka accuses Petitioner of "lying and fraud" to justify his conduct, a new and inflammatory assertion unsupported by any trial court finding. The lower courts never made such a determination, nor was this the basis for dismissal.

These accusations attempt to deflect from the core issue: whether discrimination was a substantial motivating factor in Putka's actions. Personal attacks unsupported by the record should not insulate a defendant from scrutiny under WLAD.

E. RAP 2.5 AND 9.12 WERE MISAPPLIED

(This section responds to new arguments in Putka's Answer that erroneously characterize post-sale conduct as new claims barred by RAP 2.5 and RAP 9.12 and misstate Hutchinson's use of these facts under WLAD.)

The Court of Appeals deemed post-sale retaliatory acts as "new claims" when they were clearly raised as part of Hutchinson's WLAD theory from the start. RAP 2.5 and 9.12 do not bar factual context previously pled and argued. As held in *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403 (2018), the totality of the circumstances—including timing, pattern, and motivation—must be considered in WLAD cases.

Putka also argues that the eviction and fraud reporting were not standalone causes of action and therefore were properly disregarded. This misstates the Hutchinson's position. These acts were never pleaded as separate claims but were offered as circumstantial evidence of discriminatory motive and retaliatory conduct after disclosure of Hutchinson's protected status. WLAD claims often rely on indirect evidence of motive, including timing, patterns, and shifting justifications. See *Scrivener v. Clark College*, 181 Wn.2d 439 (2014); *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403 (2018).

Moreover, the trial court acknowledged this in its oral ruling:

> "That would seem to be more of a question for a trier of fact to reason out after hearing the information. So, I'm not dismissing that cause." (Transcript, p. 38).

The Court of Appeals improperly treated these facts as isolated incidents, when they were in fact part of a broader pattern of retaliatory conduct directly relevant to Hutchinson's WLAD claim.

F. RESPONDENT MISREPRESENTS THE RECORD ON EMOTIONAL HARM AND EXCLUDED EVIDENCE

(This section addresses a new argument raised in Respondent's Answer—that the appellate court considered all relevant evidence—including claims that emotional harm and witness testimony were properly evaluated, which contradicts the record and appellate opinion.)

Putka claims that the appellate court considered all evidence, including emotional harm and witness testimony. However, the appellate opinion fails to engage with

Hutchinson's emotional distress narrative and the trial court's refusal to consider key corroborating evidence.

Hutchinson explained that Tanaja Gravina—another veteran subjected to similar conduct—would have testified to patterned behavior, but was unable to sign a declaration due to fear of retaliation. Despite subpoenaing Gravina and detailing her expected testimony, the trial court excluded her evidence. Similarly, emotional distress from Putka's threats was mischaracterized by the Court of Appeals as unrelated to his actions, when in fact the record (CP 117-125) shows a clear causal connection.

Damages for emotional harm are recoverable under WLAD. See *Dean v. Metro*, 104 Wn.2d 627 (1985); *Xieng*, 120 Wn.2d at 530. The exclusion of this evidence prejudiced Hutchinson and undermines the fairness of summary judgment.

G. RESPONDENT INCORRECTLY CLAIMS THERE IS NO NOVEL ISSUE UNDER RCW 49.60.2235

(This section addresses Respondent's new claim that there is no novel legal question, despite Petitioner having raised RCW 49.60.2235 as an unexamined statute in the Petition for Review.)

Putka argues that there is no issue of first impression because Washington has long applied the *McDonnell Douglas* framework to housing cases. However, no published appellate decision has construed RCW 49.60.2235—which specifically prohibits coercion, threats, and interference in real estate transactions.

Hutchinson's case presents a novel factual application of this statute involving a disabled veteran, retaliatory threats, and an attempt to rescind a home sale based on protected status. The legal standard for coercion in this context is undeveloped in Washington law. This is precisely the type of issue that qualifies for review under RAP 13.4(b)(4).

In *Tafoya v. Washington State Human Rights Commission*, 177 Wn. App. 216, 233–234 (2013), the Court of Appeals acknowledged that when interpreting Washington's Law Against Discrimination (WLAD), courts often rely on analogous federal civil rights jurisprudence in the absence of controlling state authority. There, the court emphasized that federal precedent under 42 U.S.C. § 1981 and related provisions may guide state law when addressing emerging or underdeveloped legal issues.

This principle supports the notion that where WLAD lacks specific precedent—as is the case with RCW 49.60.2235—Washington courts should not avoid review but rather clarify and develop the doctrine. See also *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352 (1995), recognizing that courts should take into account evolving principles of antidiscrimination law in defining the contours of statutory protections.

Accordingly, this case presents a clear opportunity for this Court to clarify the scope and application of RCW 49.60.2235 and ensure that it reflects both legislative intent and parallel antidiscrimination principles applied at the federal level. Such guidance is essential to ensuring WLAD's protections extend meaningfully to veterans and disabled persons from coercive conduct in private housing transactions.

H. ADDITIONAL NOTE ON RAP 13.4(b)(1)

(This section clarifies a point of law raised in response to Respondent's assertion that the petition failed to cite a proper basis under RAP 13.4(b)(1) and does not expand the issues raised in the Petition.)

Although Hutchinson did not cite RAP 13.4(b)(1) by number in the Petition for Review, the petition clearly argued that the Court of Appeals' decision conflicts with controlling Washington Supreme Court precedent. Specifically, the petition outlined misapplications of the legal standards set forth in *Scrivener v. Clark College*, *Mikkelsen v. PUD No. 1*, *Xieng v. Peoples Nat. Bank*, and *Dean v. Metro*. These conflicts satisfy

the standard for review under RAP 13.4(b)(1), which permits review where a Court of Appeals decision is inconsistent with binding precedent.

Putka's contention that the petition must be rejected for failing to cite RAP 13.4(b)(1) elevates form over substance. Washington courts have recognized that as long as a petition for review clearly raises a conflict with controlling Supreme Court precedent – the very circumstance described in RAP 13.4(b)(1) – the Supreme Court may consider that ground even if the rule is not expressly mentioned. The key is whether the petition identifies a conflict with a Supreme Court decision, not whether it recites the rule number.

Washington case law confirms this principle. For example, in *Buchsieb/Danard, Inc. v. Skagit County* 99 Wn.2d 577 (1983), the petitioners argued that the Court of Appeals' decision conflicted with a recent Supreme Court case (Norco Construction). The Supreme Court *"granted discretionary review for consideration of the Court of Appeals decision in*

light of [that Supreme Court precedent]" under RAP 13.4(b), even though nothing suggests the petitioners had explicitly invoked the rule by number. Likewise, in *State v. Ross*, 141 Wn.2d 304, 314-15, 4 P.3d 130 (2000), the petitioner sought review on the basis that the lower court's ruling could not stand in light of a controlling Supreme Court decision. The Supreme Court granted review to resolve that conflict treating the petition as satisfying RAP 13.4(b)(1) notwithstanding the absence of a technical citation. These cases demonstrate that when a petition clearly presents a conflict with Supreme Court precedent, the Court will entertain review under RAP 13.4(b)(1) even if the petition does not spell out the rule. In short, Petitioner's failure to cite the rule is not fatal – the petition's substance meets the RAP 13.4(b)(1) criterion by highlighting a conflict with Supreme Court authority, and that is sufficient.

CONCLUSION

This case presents both legal and factual issues that warrant guidance from this Court to protect vulnerable persons from discrimination and retaliation in Washington housing markets. As WLAD is to be liberally construed, review is essential to ensure its full remedial effect is not undermined by improper summary dismissal.

Putka concludes that the lower court properly applied the legal standards and that no reviewable issues exist. This assertion is inaccurate and directly contradicts the grounds for review identified in Hutchinson's filing. The appellate court's decision conflicts with controlling Washington Supreme Court precedent, including *Scrivener v. Clark College*, *Mikkelsen v. PUD No. 1*, and *Xieng v. Peoples Nat. Bank*, which require courts to consider circumstantial evidence and draw all inferences in favor of the nonmovant in discrimination cases. The lower courts failed to do so here, disregarding retaliatory

conduct, excluding critical testimony, and misapplying summary judgment standards.

Additionally, Putka's claim that the lower court addressed all issues raised by Hutchinson is incorrect. The Court of Appeals did not meaningfully address the exclusion of a corroborating witness, the emotional distress evidence, or the timing and pattern of Putka's retaliatory conduct. These were presented not as standalone claims, but as circumstantial evidence relevant to motive under WLAD.

Finally, Hutchinson has shown multiple valid bases for review under RAP 13.4(b), including:

- **(b)(1)**: Conflict with controlling precedent.
- **(b)(3)**: Departure from accepted judicial procedure.
- **(b)(4)**: A novel and substantial legal question under RCW 49.60.2235.

For these reasons, review should be granted.

Hutchinson's reply is limited to the new issues above, each of which supports the Court's consideration of the

petition. Putka's Answer introduces new factual attacks and legal theories that misrepresent the record, misstate the law, or obscure the novel nature of the claim. This case presents a factually and legally novel question involving disabled veterans' housing rights within underdeveloped sections of WLAD, meriting this Court's review. In the absence of clarification from this Court, the scope of WLAD's protection for veterans and disabled persons in real estate contexts will remain unsettled and inconsistently applied. For the reasons stated, review should be granted.

Respectfully submitted,

 dated 06 July 2025

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Citation	Key Principle
Scrivener v. Clark College, 181 Wn.2d 439 (2014); *Mikkelsen v. PUD No. 1*, 189 Wn.2d 516 (2017)	Circumstantial evidence and reasonable inferences must defeat summary judgment where motive is at issue.
Xieng v. Peoples Nat. Bank, 120 Wn.2d 512 (1993); *Dean v. Metro*, 104 Wn.2d 627 (1985)	WLAD is remedial and liberally construed; emotional distress damages are recoverable.
Cornwell v. Microsoft Corp., 192 Wn.2d 403 (2018)	The totality of the circumstances—including post-sale conduct—must be considered in WLAD claims.
Tafoya v. Wash. State Hum. Rts. Comm'n, 177 Wn. App. 216 (2013)	Federal civil rights jurisprudence may guide interpretation of WLAD where state precedent is lacking.
McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352 (1995)	Courts should adapt anti-discrimination law to evolving principles and real-world impacts.

Citation	Key Principle
White v. State, 131 Wn.2d 1 (1997)	A renewed motion for summary judgment is only proper if based on new law or newly discovered evidence.
42 U.S.C. § 1981	Prohibits racial discrimination in **all aspects of contracting**, including **post-formation conduct**. The 1991 amendment clarified that retaliation and interference after contract formation are actionable. Federal precedent under § 1981 informs WLAD interpretation when state law is unsettled.
Burnside v. Simpson Paper Co., 123 Wn.2d 93 (1994)	Federal burden-shifting frameworks (like *McDonnell Douglas*) are used in WLAD cases but must be applied flexibly and consistent with WLAD's remedial purpose.
Hill v. BCTI Income Fund-I, 144 Wn.2d 172 (2001)	Inference of discrimination is appropriate when employer (or actor) offers shifting justifications or inconsistent treatment. Jury must resolve such factual disputes.

CERTIFICATE OF COMPLIANCE

Undersigned hereby certifies, pursuant to RAP 10.4, this REPLY TO ANSWER pursuant to RAP 13.4(d) has a word count of approximately 2,466.

July 6, 2025

Respectfully submitted.

Sara Hutchinson PRO SE

CERTIFICATE OF SERVICE

I Declare under penalty of perjury, according to the laws of Washington state, that on the date written, I emailed a true and correct copy of this Reply to Answer and Declaration of delivery to the following person at the following email address.

Meredith A Long

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Dated this 6th Day of July 2025

Sara Hutchinson – PRO SE

SARA HUTCHINSON - FILING PRO SE

July 06, 2025 - 1:53 AM

Transmittal Information

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Appellate Court Case Title:	Sara Hutchinson v. Ed Putka
Superior Court Case Number:	21-2-00932-5

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