No. (868161)

COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON

KEVIN HARRIS, *Plaintiff – Appellant - Petitioner*

v.

CB SOLUTIONS, LLC. and DANIEL ALLEN, *Defendants – Appellees - Respondents*

PETITION FOR REVIEW IN THE SUPREME COURT OF WASHINGTON STATE

Kevin Harris

Pro Se Appellant Petitioner

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TO: THE HONORABLE SUPREME COURT OF THE STATE OF WASHINGTON

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A. IDENTITY OF PETITIONER

This petition for review is submitted to the Washington State Supreme Court by the Petitioner Kevin Harris, Pro Se Plaintiff and Appellant.

B. CITATION TO COURT OF APPEALS DECISION

In the matter at hand, Harris v. CB Solutions, LLC. and Allen, the Court of Appeals (Case 868161) addressed the issues presented in their unpublished order on April 28, 2025 and affirmed the Superior Court of the State of Washington in and for the County of Snohomish (Case 22-2-03565-31) ruling. Appellant, Kevin Harris, filed a Motion to Reconsider on May 16, 2025. The Motion to Reconsider was denied on June 13, 2025. The opinions and orders of the Court of Appeals are attached as an appendix to this Petition.

C. ISSUES PRESENTED FOR REVIEW

The Court of Appeals declined to meaningfully engage with the core legal concepts. Notably, the appeals court dismissed Harris's equitable estoppel legal argument not on its merits, but on a procedural technicality, labeling it as an "untimely raised legal theory" without acknowledging the incontrovertible factual record that established Equitable Estoppel should apply. This decision is in conflict with previous Supreme Court decisions. RAP 13.4(b)(1).

The Court of Appeals rejected Harris's claims CB Solutions lacked jurisdiction to dictate his medical choices, invoking the doctrine of at-will employment as though that alone resolved the question of whether an employer may compel employees to submit to any medical intervention. The court overlooked the fact CBS had every reason to expect Harris was engaging in protected activity based on the unambiguous language in RCW 70.122.010, RCW 7.70.065 and RCW 49.60.030. At-will employment is not a blanket

license to fire employees at will. This decision involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

The Court of Appeals disregarded compelling evidence that CB Solutions violated the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, by preemptively and categorically refusing religious accommodations. The Court claimed that Harris had not "informed" CB Solutions of his religious objection prior to his termination. This is in direct contrast to the facts contained in his complaint and in the interrogatories - repeated written statements from CB Solutions "not offering an exemption to our company vaccine mandate." This decision is in conflict with previous Supreme Court decisions. RAP 13.4(b)(1).

The Court of Appeals cited Harris's interrogatory response where he stated that he did not request a religious exemption, but the Court did not bother to cite the full text of the same interrogatory where Harris explained that he did not

do so because the employer, CB Solutions, had categorically closed the door on all exemptions, both in writing and verbally. This omission by the Court of Appeals distorted the record and undermined the credibility of the court's conclusion leading to a significant question of law under the Constitution of the State of Washington. RAP 13.4(b)(3).

Harris has presented concrete evidence that CB Solutions not only refused to accommodate but took affirmative steps to block any attempt by Harris to assert his religious objections. The appeals court's unwillingness to engage with this evidence or address the employer's preemptive denial of all exemptions renders its decision legally hollow and deeply unjust.

D. STATEMENT OF THE CASE

Petitioner, Kevin Harris, seeks review of the Washington State Court of Appeals, Division One ruling which affirmed the trial court's dismissal of his claims against former employer, CB Solutions, LLC. App. 2. Harris challenges the appeals

court's perfunctory denial of his motion for reconsideration. App 4. This case presents critical issues regarding the application of equitable estoppel, the constructive denial of religious accommodations, and the enforcement of the Washington Law Against Discrimination (WLAD).

Harris sued CB Solutions and Allen (the defendants) for wrongful termination in June 2022. CP 514-697. According to Harris's amended complaint, CB Solutions hired Harris as a warehouse operations specialist in June 2018. CP 262-495. Harris alleged that on August 18, 2021, in response to the COVID-19 pandemic, CB Solutions "announced to all of its employees . . . that it would require all employees to be fully vaccinated against [COVID-19], in order to be allowed access to [CB Solutions'] office facility." CP 267. Harris alleged that on September 3, 2021, after he was explicitly informed that no medical or religious exemptions would be allowed, CB Solutions wrongfully terminated his employment. CP 270.

In February 2024, Harris moved for partial summary judgment, arguing that he was entitled to judgment as a matter of law on certain of his claims. CP 169-259, 98-130. The defendants opposed Harris's motion and cross-moved for summary dismissal of all of Harris's claims. CP 818-838, 713-733. The trial court denied Harris's motion, granted the defendants' cross-motion, and entered judgment in CB Solutions' favor. CP 92-94. Harris moved for reconsideration, which the trail court denied. CP 32-91, 3-8, 1-2.

In June 2024, Harris filed an appeal with the Court of Appeals Division One arguing the trial court erred by summarily dismissing his claims against the defendants and denying his motion for reconsideration. The appeals court affirmed the trial court's decisions on April 28, 2025, and denied Harris' motion for reconsideration on June 13, 2025. App. 2, App. 4.

E. ARGUMENT

The Supreme Court of Washington should accept this petition for review, as the case meets three considerations governing acceptance of review under RAP 13.4(b)(1), (3), and (4), as elaborated in the argument below.

Petitioner, Kevin Harris, respectfully requests the Supreme Court grant review of the Court of Appeals' decision affirming the dismissal of his claims against Defendant. The Court of Appeals failed to address equitable estoppel and constructive denial of religious accommodations adequately, and its decision undermines the public policy goals of WLAD and anti-discrimination laws.

I. Does equitable estoppel apply to CB Solutions, LLC.?

The doctrine of equitable estoppel is central to this case. The employer's policy of preemptively denying all exemptions created reasonable belief that no accommodations were possible. This belief deterred the Petitioner from formally

requesting an exemption, constituting a constructive denial of accommodation. Courts have recognized when an employer's actions or policies frustrate an employee's ability to seek accommodations. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015). *Abdi Mohamed v. 1st Class Staffing, LLC*, 286 F. Supp. 3d 884. "Courts disfavor equitable estoppel, so a party claiming estoppel must prove its elements by clear, cogent, and convincing evidence." *Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 902, 351 P.3d 895 (2015).

To prove Equitable Estoppel, a plaintiff must show that (a) the defendant made statements inconsistent with a later claim, (b) the plaintiff reasonably relied on these statements, (c) the plaintiff was harmed as a result if defendant is allowed to contradict the original statement, (d) defendants need to be estopped from this contradiction, and (e) estopping defendant will not impair any functions, WAC 388-02-0495, (2). In this case, Harris has shown that (a) CBS repeatedly communicated, both in writing and verbally, that no exemptions - including

religious ones - would be granted, (b) based on these statements, Harris did not submit a religious exemption request, believing it would be futile, (c) Harris was harmed when his employment was terminated, as CBS now claims religious exemptions were possible, contradicting their prior statements, (d) estopping CBS is needed to manifest the injustice being done to Harris, and (e) exercising equitable estoppel does not impair any department functions.

II. Was the equitable estoppel legal theory raised at trial court and properly preserved for appeal?

The primary basis for this petition is the well-established principle in Washington law that cases should be decided on their merits rather than dismissed due to procedural flaws. This principle reflects the judiciary's commitment to ensuring justice and fairness in the resolution of disputes.

As such, this Court should grant review to address the significant question of whether the lower court's decision aligns

with Washington's strong preference for substantive justice over procedural technicalities.

The Washington State Supreme Court has demonstrated a consistent approach to deciding cases on their merits rather than dismissing them on procedural grounds. This principle is evident in cases where the court has emphasized the importance of addressing substantive issues, particularly in the context of appellate review.

Plaintiff's Motion for Reconsideration in the trial court clearly argued that Defendant's blanket policy—stating no exemptions of any kind would be considered—estopped Defendant from later asserting Plaintiff's failure to explicitly invoke a religious objection to their vaccine requirement as a working condition of employment. This argument was supported by recorded facts, including written communications from Defendant; framed as a legal basis to reconsider summary judgment with the trial court; and filed timely under CR 59 (a)(7), (8), (9).

The Court of Appeals' ruling implies that arguments raised on a motion for reconsideration are somehow procedurally barred from appellate review. However, Washington law makes clear that issues raised in a trial court's post-judgment motion are properly preserved for appeal if they are adequately presented at the trial court. Courts require that claims of error be raised at trial court to allow the court an opportunity to address and correct them, thereby avoiding unnecessary retrials. Harris effectively demonstrated this through his Motion to Reconsider at the trial court level, clearly establishing the facts strongly support the occurrence of equitable estoppel, which should have been reasonably inferred.

In *Huber v. Kent Sch. Dist.*, the court addressed whether evidence and arguments submitted during a motion for reconsideration could be considered on appeal. The court held it would consider materials submitted on reconsideration to the extent they were duplicative of materials already before the trial court during summary judgment. The **court emphasized the**

principle of deciding cases on their merits whenever possible and declined to reject the arguments solely because they were raised during reconsideration. *Huber v. Kent Sch. Dist.*, 2021 Wash. App. *Emphasis added*.

Harris's materials submitted on reconsideration were duplicative of the materials already before the trial court during summary judgment and the case should have been considered on its merits. "'To the extent that the materials submitted by the Hubers on reconsideration and cited in their opening brief are duplicative of materials that were before the trial court on summary judgment, we will consider those materials on review. Relying on the principle that decisions on the merits are preferred whenever possible,' See RAP 1.2." *Id*.

Harris's facts support all the elements of the equitable estoppel argument prior to the trial court summary judgment ruling. Harris also named the equitable estoppel legal theory by name in his motion to reconsider clarifying how the facts in the case show that equitable estoppel applies and defendants should

be estopped from their contradictory statements. As Harris is Pro Se, his pleadings should be liberally construed and held to less stringent standards than formal pleadings drafted by attorneys, and the issue should be decided on its merits rather than any procedural flaw by Harris.

Additionally, in *Schmidt v. Coogan*, 181 Wn.2d 661 "'Our appellate rules allow us to decline to address on appeal issues inadequately raised at the trial court, **but they do not require us to decline consideration of such issues**. RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court.' **Our rules also encourage us to decide cases on the merits, not on procedural flaws**. RAP 1.2(a) ('**These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.** Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands [subject to timeliness exceptions not relevant here].'" *Emphasis*

added. In Harris's case, the perceived procedural flaw was cited and the merits of his argument were not engaged with.

Also notable, in *Ford v. Dep't of Corr., 2024 Wash. App.*, the court considered whether the State's quasi-judicial immunity argument, raised for the first time in a motion for reconsideration, could be reviewed. The court held that there was no prejudice to the opposing party because the argument was already referenced in earlier pleadings, and the opposing party had an opportunity to respond. "'In the context of summary judgment, unlike in a trial, there is no prejudice if the court considers additional facts on reconsideration.' *Chen v. State*, 86Wn. App. 183, 192, 937 P.2d 612 (1997). Motions for reconsideration and the taking of additional evidence are within the discretion of the superior court. *Id*." This case highlights the equitable estoppel claim from Harris does not prejudice the Respondents because they have had ample time to address the claim.

Additionally, Section § 16.07[4][b] Flagrant Legal Errors May Be Raised for First Time in CR 59 Motion, states that despite the general rule, in some rare instances such issues may be salvaged by a CR 59 motion. For example, . . . **if a party inelegantly but fairly raised the issue,** it may be raised and preserved post-trial. [*Sommer v. Dep't of Soc. & Health Serv's*, 104 Wn. App. 160, 171, 15 P.3d 664 (2001); *Newcomer v. Masini*, 45 Wn. App. 284, 287, 724 P.2d 1122 (1986); *State v. Case*, 49 Wn.2d 66, 75, 298 P.2d 500 (1956)]. *Emphasis added*. This Section shows even an inelegantly raised equitable estoppel theory was preserved for post-trial appeal, and Harris's equitable estoppel claim should be addressed on its merits.

Petitioner's estoppel argument was timely and properly raised – through the facts and elements discussed prior to summary judgment, then directly by name - in the trial court's motion for reconsideration, Petitioner respectfully requests that this Court grant review and address this dispositive legal theory on the merits.

III. Should the Courts have allowed an amended complaint?

Appellate courts review dismissal under 12(b)(6) *de novo.* See *Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirit & Wansbrough*, 354 F.3d 348, 351 (5th Cir. 2003). When dismissing a complaint, leave to amend must be granted unless it is clear that the complaint's deficiencies cannot be cured by amendment. *Lucas v. Dep't of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995). "A document filed *pro se,* such as the Appellant's, is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). *Linne v. Alameda Health Sys.*, 22-cv-04981-RS, 3 (N.D. Cal. Jan. 24, 2023). The Court of Appeals affirmed the trial court's err in not allowing the Petitioner to amend his complaint to cure any deficiencies.

Had the courts conducted a proper *de novo* review and considered all facts - and all reasonable inferences therefrom - in the light most favorable to the non-moving party (Harris) they could not reasonably have reached the conclusion that they did.

The evidence below from Harris' Complaint and his Summary Judgment arguments (brought timely to the trial court's attention) support Harris' equitable estoppel claims indisputably**,** and the Defendant's Summary Judgment should have been denied based on any one of the facts listed below.

In Harris' Amended Complaint at the trial court, Harris listed these facts and arguments that should infer Equitable Estoppel.

PAC 4.20: "On or around September 1, 2021, Plaintiff's Immediate Supervisor at CB SOLUTIONS, LLC. sent to Plaintiff an email with subject line "RE: INTERNAL- COVID-19 RESPONSE PLAN UPDATE', wherein he advised the Plaintiff . . .that **'our company is not offering an exemption to our company vaccine mandate'**,…" *emphasis added.* CP 268.

Attachment 19 – Employer Response to EUA Vaccine Notice to Employer, referenced in PAC 4.20, furthermore contains the language "**we are not offering an exemption to our company vaccine mandate**." *emphasis added.* CP 430-431.

PAC 6.20: "the plaintiff was . . . informed that he had to request a medical or religious accommodation . . . only after the plaintiff was terminated." CP 280.

The Appeals Court erroneously claimed "CB Solutions submitted Harris's Interrogatory responses stating that he did not request a religious exemption from the vaccine policy." However, the appeals court completely overlooked a vital part of the answer to the same interrogatory providing the undisputed facts laying the elements for equitable estoppel. From Harris' amended response to Defendants' Interrogatory #8, which the Court of Appeals cited, asking Harris whether or not he requested a religious exemption to the vaccine mandate, the answer actually states:

"The answer is no. **The defendants** admitted to plaintiff through verbal and written **communication that they [CBS] were not willing to offer a religious exemption.**" *Emphasis added*. CP 782.

Further evidence can also be found from Harris' Motion for Partial Summary Judgment:

"Yet upon requesting an exemption [Exhibit 3], **the Plaintiff was informed** verbally and in writing that **no exemptions would be considered or offered** to CBS employees [Exhibit 7]." CP 171. And later "**CBS stated multiple times** to the Plaintiff in verbal and written communication **that no exemptions or accommodations would be offered to the Covid-19 Policy** [Exhibit 7]." CP 172. As well as, "the Defendant confirmed the policy they adopted did not allow for any compliance other than vaccination [Exhibit 7]." CP 172-173. *Emphasis added.*

As well as from Harris' response to Defendant's Summary Judgment Motion:

"The Plaintiff emailed the Defendant specifically stating "I'd like to request an exemption to the vaccine requirement." The Defendant at no time clarified what was the path to exemptions nor that religious or medical basis be explicitly claimed." CP 102.

Petitioner has more than met his obligation to provide sufficient facts and arguments, supported by law, to raise the

rights for relief above the speculative level. Petitioner is entitled to prevail on his claims, and recent public interest and recent court rulings favor his position. The courts erred in not allowing the Petitioner to amend his complaint to cure any deficiencies.

IV. Did constructive denial of religious accommodations occur?

WLAD must be construed liberally to effectuate its anti-discrimination purpose. See RCW 49.60.020, "The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof." By declining to address the estoppel argument due to its timing—when it was in fact properly raised—the Court undermines both procedural fairness and the substantive statutory protections WLAD was enacted to secure.

The employer's blanket policy denying all exemptions shut down the accommodation process, violating WLAD's requirements to reasonably accommodate religious practices.

The Supreme Court has held that employers must engage in an interactive process to accommodate religious beliefs. *Zimmerman v. PeaceHealth*, 701 F. Supp. 3d 1099, *Suarez v. State*, 23 Wn. App. 2d 609.

The employer's preemptive denial of exemptions is analogous to the constructive denial of accommodations recognized by *Abdi Mohamed v. 1st Class Staffing, LLC*, where the employer's actions frustrated the employees' ability to discuss possible accommodations, stating *"*there were disputed material issues particularly as to whether the employers frustrated the employees from having an opportunity to discuss possible accommodations*." Abdi Mohamed v. 1st Class Staffing, LLC*, *286 F. Supp. 3d 884*.

The Court of Appeals' decision conflicts with public policy and the principles articulated in *EEOC v. Abercrombie & Fitch Stores, Inc.* and *Abdi Mohamed v. 1st Class Staffing, LLC*. These cases emphasize that employers cannot avoid liability by frustrating or preemptively denying accommodations for

religious practices. Allowing the employer's actions to stand would undermine the purpose of anti-discrimination laws and public policy, enabling employers to bypass their legal obligations.

V. Was WLAD violated by CB Solutions, LLC.?

WLAD prohibits discrimination based on religion and requires employers to provide reasonable accommodations unless doing so would impose undue hardship. The employer's actions in this case, having a blanket policy denying all exemptions and terminating the Petitioner for non-compliance with a vaccine policy without considering his religious beliefs constitutes religious discrimination and retaliatory termination. The Court of Appeals failed to address this issue adequately, ignoring the Petitioner's argument that the employer's actions frustrated his ability to seek accommodations.

The Court of Appeals would like to bypass any accountability with a simple statement of "at-will, and therefore

need no authority." However, there are well-known limits on at-will employment, and protected activity has always been excluded from at-will. The case law counters the Appeals Court's findings, and backs the fundamental concept that At-Will employment is not a blanket excuse to violate employee rights.

In *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403, the court found that summary judgment was improper in a retaliation claim under the Washington Law Against Discrimination (WLAD). The court adopted the "knew or suspected" standard, which protects employees from adverse actions based on an employer's suspicion of protected activity. Harris' repeated efforts to bring up to CBS its obligations under the law including non-discrimination laws was a strong indicator that Protected Activity is involved.

The *Cornwell* decision notably stated: "We review a trial court's grant of summary judgment de novo." *Scrivener v.Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014). "Summary

judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Id. **"[B]ecause of the difficulty of proving a discriminatory motivation,"** id. at 445, **"[s]ummary judgment for an employer is seldom appropriate" in the employment discrimination context,"** *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 189 Wn.2d 516, 527, 404 P.3d 464 (2017). *Emphasis added*. We must also "consider all facts and make all reasonable factual inferences in the light most favorable to the nonmoving party." *Scrivener v. Clark Coll.*, 181 Wn.2d at 444. Yet, the Court of Appeals did not follow these legal standards and precedents in Harris' case.

In *Lins v. Children's Discovery Ctrs.*, 95 Wn. App. 486, the court reversed a summary judgment dismissal of a wrongful discharge claim, holding that public policy prohibits retaliation against an employee for refusing to carry out an unlawful order. The court concluded that the employee's refusal to comply with

the order was protected by public policy, and the termination was unlawful. “It is unlawful for an employer to discharge an employee because the employee exercises a legal right or privilege,” *Id.* “‘These and similar provisions are often summarized by saying that it is unlawful for an employer to ‘retaliate’ against an employee for ‘protected activity.’” *Id.*

In *Thompson v. St. Regis Paper Co.,* 102 Wn.2d 219*,* the court recognized that an employer could be liable in tort for discharging an employee in violation of a clear mandate of public policy. The decision highlighted that at-will employment is subject to exceptions where public policy is at stake, such as when an employee is terminated for exercising legal rights. In Harris’ case, he acted on the conviction that he had the right to make his own personal medical decisions about an experimental vaccination, and defendants have not provided any compelling facts or law countering this.

Neither have CB Solutions, nor the lower courts, shown where an individual employee working for a small private

employer is NOT protected by RCW 70.122.010- "adult persons have fundamental right to control the decisions relating to the rendering of their own health care" and RCW 7.70.065- "a person who is of the age of consent to make a particular health care decision is presumed to have capacity."

"In determining whether a clear mandate of public policy is violated, courts should inquire whether the employer's conduct **contravenes the letter or purpose** of a constitutional, statutory, or regulatory provision or scheme." *Emphasis added.* *Parnar v. Americana Hotels, Inc.*, 65 Hawaii 370, 380, 652 P.2d 625 (1982).

"We believe that this narrow public policy exception should be adopted because it properly balances the interest of both the employer and employee. The employee has the burden of proving his dismissal violates a clear mandate of public policy. Thus, to state a cause of action, the employee must plead and prove that a stated public policy, either legislatively or judicially recognized, **may have been contravened**. . .

However, once the employee has **demonstrated that his discharge may have been motivated by reasons that contravene a clear mandate of public policy**, **the burden shifts to the employer to prove that the dismissal was for reasons other than those alleged by the employee.** Thus, employee job security is protected against employer actions that contravene a clear public policy." *Id. Emphasis added.* Harris has demonstrated his termination was a constructive discharge that was motivated by CB Solutions actively trying to suppress Harris' religious accommodation rights by preemptively denying all exemptions to their Covid-19 Vaccine Mandate. The burden should now be on Respondents to show that Petitioner's discharge was not for reasons alleged by Harris.

The WA State Court of Appeals claims that Harris did not articulate his violation of public policy argument to the trial court at summary judgment, and even in his brief on appeal, fails to analyze the elements of a termination-in-violation-of-public-policy claim. Harris thoroughly disagrees with this

assessment of his arguments at the trial court level. Harris' Response to Defendant's Motion for Summary Judgment addressed each individual claim the Defendants made regarding public policy which they say gives them authority to impose a vaccination mandate on its workforce. In each claim, Harris not only showed that the public policy CBS was claiming did not in fact give CBS any authority to require vaccination for his continued employment, but also showed how the public policy they were referencing actually showed that CBS was in conflict with the public policy they were citing.

Harris has properly addressed the elements of a termination-in-violation-of-public-policy claim. Harris has (1) cited the laws or statutes that show CBS is under no obligation to require Harris to be fully vaccinated for continued employment, and that Harris has a public policy right to make his own medical and religious decisions, (2) ignoring his right to make his own medical and religious decisions, as CBS did, jeopardizes that clear public policy, (3) by exercising the right

to make his own medical and religious decisions, Harris was engaging in protected activity and CBS retaliated, and (4) the defendant lacks any authority to impose a vaccination requirement sans religious exemptions.

VI. What would the broader implications for Anti-Discrimination laws be if this case were not overturned?

If the Court of Appeals' decision is allowed to stand, it will set a dangerous precedent, enabling employers to avoid liability by preemptively denying accommodations and invoking equitable estoppel to shield themselves from accountability. This undermines the purpose of anti-discrimination laws and public policy.

As articulated in *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015), where the U.S. Supreme Court held that an employer cannot avoid liability by claiming ignorance of an employee's need for accommodation when its policies effectively preclude such accommodations. “Title VII does not

demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not 'to fail or refuse to hire or discharge any individual because of such individual's' 'religious observance and practice'" *Id*.

Furthermore, the Court clarified that an employer's motive, rather than knowledge, is the critical factor in determining liability under Title VII. Justice Scalia, writing for the majority, explained, "An applicant need only show that his need for an accommodation was a motivating factor in the employer's decision" ¶ 21.24 Religious Accommodation. The Court rejected the argument that an employer must have actual knowledge of an applicant's need for accommodation, emphasizing that even an "unsubstantiated suspicion" of such a need could suffice to establish liability if it motivated the employer's decision. *Id*.

Additionally, the Court noted that Title VII affords "favored treatment" to religious practices, requiring employers

to accommodate them unless doing so would impose an undue hardship on the business. This principle underscores that neutral policies cannot justify disparate treatment of religious practices if they result in discrimination. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015).

The employer's actions in preemptively denying all exemptions to its medical policy, as seen in Harris's case, violated both Title VII and the WLAD, which mirrors Title VII protections. By failing to accommodate employees' religious practices, the employer not only breached these legal protections but also set a dangerous precedent. If this case stands, it effectively grants employers in Washington state unchecked authority to impose medical policies and bypass WLAD protections, undermining the fundamental right to free exercise of religion—a cornerstone of constitutional law in the United States.

By summarily dismissing exemptions, employers assume god-like control over employees' life choices, transforming

workplaces into authoritarian domains where individual rights are subordinate to corporate mandates. This critical erosion of the most cherished protected right cannot be allowed to stand, as it threatens the very essence of religious liberty and opens the door to a perilous workaround in the employer-employee relationship, granting employers disproportionate power.

F. CONCLUSION

For the foregoing reasons, meeting three considerations governing acceptance of review under RAP 13.4(b)(1), (3), and (4), the Petitioner respectfully requests the Washington State Supreme Court accept review of this case. The issues presented are of significant public importance and require clarification to ensure the proper application of equitable estoppel, the enforcement of WLAD, and the protection of employees' rights under anti-discrimination laws.

G. APPENDIX

I. 6 March 2025, Court of Appeals, Order Denying Appellant Motion for Oral Argument and to Allow Additional Evidence on Review

II. 28 April 2025, Court of Appeals, Unpublished Opinion

III. 28 April 2025, Court of Appeals, Cover Letter for Unpublished Opinion

IV. 13 June 2025, Court of Appeals, Order denying Motion for Reconsideration

V. 13 June 2025, Court of Appeals, Cover Letter for Order denying Motion for Reconsideration

Pursuant to RAP 18.17, I certify that the foregoing document contains 4,864 words.

Respectfully submitted this 14th day of July 2025.

__/s/ Kevin Harris_____
Kevin Harris,
Pro Se Petitioner

CERTIFICATE OF SERVICE

Appellant Kevin Harris certifies that on the 14th day of July 2025, he caused a true and correct copy of this document to be served on the following persons by e-filing with the Clerk of Court and by email to the addresses below:

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_____/s/ Kevin Harris_____
Kevin Harris,
Pro Se Petitioner

APPENDIX 1

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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March 6, 2025

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Case #: 868161
Kevin Harris, Appellant v. CB Solutions, LLC & Daniel Allen, Respondents
Snohomish County Superior Court No. 22-2-03565-8

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on March 6, 2025:

> At the direction of the panel, appellant's motion for oral argument and to allow additional evidence on review is denied.

Sincerely,

Lea Ennis
Court Administrator/Clerk

ejg

APPENDIX 2

FILED
4/28/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KEVIN HARRIS,

Appellant,

v.

CB SOLUTIONS, LLC and DANIEL ALLEN,

Respondents.

No. 86816-1-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Kevin Harris appeals the trial court's summary dismissal of his claims against his former employer, CB Solutions, LLC, and its manager, Daniel Allen. Harris also challenges the trial court's order denying his motion for reconsideration. We affirm.

I

Harris sued CB Solutions and Allen (the defendants) for wrongful termination in June 2022. According to Harris's amended complaint, CB Solutions hired Harris as a warehouse operations specialist in June 2018. Harris alleged that on August 18, 2021, in response to the COVID-19 pandemic, CB Solutions "announced to all of its employees . . . that it would require all employees to be fully vaccinated against [COVID-19], in order to be allowed access to [CB Solutions'] office facility." Harris alleged that on September 3, 2021, after he declined to be vaccinated, CB Solutions wrongfully terminated his employment.

In February 2024, Harris moved for partial summary judgment, arguing that he was entitled to judgment as a matter of law on certain of his claims. The defendants opposed Harris's motion and cross-moved for summary dismissal of all of Harris's claims. The trial court denied Harris's motion, granted the defendants' cross-motion, and entered judgment in CB Solutions' favor. Harris moved for reconsideration, which the trial court denied. Harris appeals.

II

Harris argues that the trial court erred by summarily dismissing his claims against the defendants. We disagree.

A

"We review a trial court's grant of summary judgment de novo." Litvack v. Univ. of Wash., 30 Wn. App. 2d 825, 842, 546 P.3d 1068 (2024). "Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Litvack, 30 Wn. App. 2d at 842 (citing CR 56(c)).[1] "We consider all facts and reasonable inferences in the light most favorable to the nonmoving party," Litvack, 30 Wn. App. 2d at 842, but "[a]ffidavits containing conclusory statements without adequate factual support are insufficient to defeat a motion for summary judgment." Guile v. Ballard Cmty. Hosp., 70 Wn. App. 18, 25, 851 P.2d 689 (1993). Additionally, while we may affirm a summary judgment order on any basis supported by the record, Anderson v. Grant County, 28 Wn. App. 2d 796, 803, 539 P.3d

[1] Harris relies on the standards for dismissal under the federal counterpart to CR 12(b)(6). Those standards do not apply here because the trial court dismissed Harris's claims under CR 56, not CR 12(b)(6).

40 (2023), we "will consider only evidence and issues called to the attention of the trial court." RAP 9.12.

B

In support of reversal, Harris contends that CB Solutions was not authorized by any of the following to make vaccination a condition of his employment—and, consequently, to terminate him for not getting vaccinated: (1) the Public Readiness and Emergency Preparedness (PREP) Act, 42 U.S.C. §§ 247d-6d to -6e, (2) the Federal Food Drug, and Cosmetic Act (FDCA), 21 U.S.C. §§ 301-399i, (3) the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. §§ 651-678, (4) the Washington Industrial Safety and Health Act of 1973 (WISHA), chapter 49.17 RCW, or (5) any of then-governor Jay Inslee's emergency proclamations regarding COVID-19.

But as Harris acknowledges, Washington is an at-will employment state, meaning that as a general matter, "[a]n employer may discharge an . . . employee for 'no cause, good cause or even cause morally wrong without fear of liability.' " Roe v. TeleTech Cust. Care Mgmt. (Colo.) LLC, 171 Wn.2d 736, 754-55, 257 P.3d 586 (2011) (quoting Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 226, 685 P.2d 1081 (1984)). Accordingly, CB Solutions did not need separate authority under any of the foregoing statutes or proclamations to terminate Harris's employment when he declined to comply with its vaccine policy.[2]

[2] Harris relies largely on federal cases to support a number of his assertions to the contrary. For example, he cites Health Freedom Defense Fund, Inc. v. Carvalho, 104 F.4th 715 (9th Cir. 2024), for the proposition that CB Solutions did not have authority to implement a vaccine policy. But the federal cases Harris cites are not binding on this court. See Delex Inc. v. Sukhoi Civ. Aircraft Co., 193 Wn. App. 464, 473, 372 P.3d 797 (2016) (lower federal court decisions are merely persuasive authority in this court). In any case, Carvalho has been vacated pending an en banc rehearing, 127 F.4th 750 (9th Cir. 2025), and the only claims at issue therein were substantive due process and equal protection claims against the Los Angeles Unified School District, i.e., a government employer. 104 F.4th at 718, 720. Absent certain

Harris disagrees and argues that CB Solutions wrongfully terminated him in violation of public policy. "One narrow exception to the general at-will employment rule prohibits an employer from discharging an employee 'when the termination would frustrate a clear manifestation of public policy.' " Roe, 171 Wn.2d at 755 (quoting Ford v. Trendwest Resorts, Inc., 146 Wn.2d 146, 153, 43 P.3d 1223 (2002)). But Harris did not articulate this argument to the trial court at summary judgment, and even in his briefing on appeal, he fails to analyze the elements of a termination-in-violation-of-public-policy claim. Cf. Roe, 171 Wn.2d at 756 (plaintiff alleging termination in violation of public policy must prove (1) the existence of a clear public policy, (2) that discouraging the conduct in which they engaged would jeopardize the public policy, (3) that the public-policy-linked conduct caused the dismissal, and (4) that the defendant lacks an overriding justification for the dismissal). We decline to consider this claim for the first time on appeal. See RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court."); see also Evans v. Firl, 25 Wn. App. 2d 534, 544 n.3, 523 P.3d 869 (2023) ("We will not consider issues that are not adequately briefed and argued, even if they are included as assignments of error.").

Harris next asserts that "the choice to accept a vaccine is normally a 'private, irreversible medical decision made in consultation with private medical professionals outside the federal workplace,' and, therefore, a vaccine mandate cannot be made a 'working condition' of employment," quoting the Fifth Circuit's decision in Feds for

exceptions, which Harris does not address, a plaintiff may not assert constitutional violations against private actors like the defendants. See Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982) ("Our cases have . . . insisted that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State.").

Medical Freedom v. Biden, 63 F.4th 366, 376 (5th Cir.), vacated on other grounds, ___ U.S. ___, 144 S. Ct. 480, 217 L. Ed. 2d 248 (2023). But the Fifth Circuit did not hold that employers cannot require vaccines as a working condition of employment—instead, it held only that a vaccine mandate is not a "working condition" as contemplated by the Civil Service Reform Act of 1978[3] such that federal courts lack jurisdiction over pre-enforcement challenges brought by federal employees. See Feds for Medical Freedom, 63 F.4th at 369-70. Harris's reliance on Feds for Medical Freedom is misplaced.

Harris's reliance on section 564 of the FDCA, codified at 21 U.S.C. § 360bbb-3, is similarly misplaced. That statute governs emergency use authorization (EUA) for medical products that have not received full approval. See 21 U.S.C. § 360bbb-3(a)(1)-(2). According to Harris, section 564 required CB Solutions to give him certain information and to obtain his informed consent. He asserts that CB Solutions failed to comply with section 564 and that he "had the right to refuse the 'voluntary' participation in the [COVID-19] vaccination program without retaliatory and adverse consequences due to exercising his right to Informed Consent."

Section 564 of the FDCA directs the "Secretary" to establish EUA conditions "designed to ensure that individuals to whom the product is administered are informed . . . of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks." 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). The "Secretary" means the Secretary of Health and Human Services. See 21 U.S.C. § 321(d) (defining the term "Secretary"). As multiple federal courts have

[3] Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

explained, section 564's informed consent provision does not apply to an employer like CB Solutions "when the employer is not 'directly administering the vaccine.' " Henson v. PeaceHealth Peace Harbor Med. Ctr., No. 6:23-cv-01101-MK, 2023 WL 9101959, at *3 (D. Or. Oct. 25, 2023) (court order) (quoting Burcham v. City of Los Angeles, 562 F. Supp. 3d 694, 708 (C.D. Cal. 2022)); see also Klaassen v. Trs. of Ind. Univ., 549 F. Supp. 3d 836, 870 (N.D. Ind. 2021) (informed consent requirement applies only to medical providers), vacated on other grounds, 24 F.4th 638 (7th Cir. 2022); Valdez v. Grisham, 559 F. Supp. 3d 1161, 1172 (D.N.M. 2021) (informed consent requirement does not apply to those not directly administering the vaccine).

C

Harris next argues that CB Solutions violated Title VII of the Civil Rights Act of 1964, 17 U.S.C. § 2000e (Title VII), and the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, because it failed to reasonably accommodate his religious beliefs by granting him a religious exemption to its vaccination policy. But as CB Solutions pointed out at summary judgment, Title VII applies only to employers with 15 or more employees, see 42 U.S.C. § 2000e(b), and Harris did not dispute that CB Solutions had only 12 employees.

As for the WLAD, a plaintiff claiming failure to accommodate religious practices must show "that (1) he or she had a bona fide religious belief, the practice of which conflicted with employment duties; (2) he or she informed the employer of the beliefs and the conflict; and (3) the employer responded by subjecting the employee to threatened or actual discriminatory treatment." Kumar v. Gate Gourmet Inc., 180 Wn.2d 481, 501, 325 P.3d 193 (2014) (emphasis added).

Here, in support of its motion for summary judgment, CB Solutions submitted Harris's interrogatory responses stating that he did not request a religious exemption from the vaccine policy. Additionally, Allen declared that "[b]ased on correspondence and conversations with [Harris], I understood that his objection to taking the COVID-19 vaccination was based on concerns about the vaccine's approval status, effectiveness against the virus, and potential to alter one's DNA," and that "[w]hen [Harris] was terminated, I was not aware of any . . . sincerely held religious belief that would prevent [Harris] from receiving a COVID-19 vaccine." Meanwhile, Harris did not present any admissible evidence to create a genuine issue of material fact about whether he informed CB Solutions of his religious beliefs and their conflict with the vaccination policy. Indeed, it was not until Harris moved for reconsideration that he addressed the matter, and even then, Harris admitted that he "was not given a chance to articulate [his] religious beliefs," that he "articulated [his] concerns for safety arising from [his] religious beliefs as best [he] could," and that at a September 2, 2021 meeting with his supervisor and Allen, he asked, "I thought you were required to offer religious and medical exemptions?" At best, Harris showed only that his objections to the vaccine policy were motivated by his religious beliefs. But he failed to allege specific facts showing that he informed CB Solutions of those beliefs and their conflict with the policy. The trial court did not err by dismissing Harris's WLAD-based religious accommodation claim.

III

Harris also asserts that the trial court erred by denying his motion for reconsideration. Again, we disagree.

We review the denial of a motion for reconsideration for an abuse of discretion. Dynamic Res., Inc. v. Dep't of Revenue, 21 Wn. App. 2d 814, 824, 508 P.3d 680 (2022). "A trial court abuses its discretion if its decision is 'manifestly unreasonable or exercised on untenable grounds or for untenable reasons.' " Dynamic Res., 21 Wn. App. 2d at 824 (quoting McCoy v. Kent Nursery, Inc., 163 Wn. App. 744, 758, 260 P.3d 967 (2011)).

Harris argued in his motion for reconsideration that he was entitled to a religious exemption, but as discussed above, Harris did not raise a genuine issue of material fact as to whether he informed CB Solutions of his religious beliefs and the conflict with its vaccine policy prior to his termination.[4] Harris also argued on reconsideration that CB Solutions was equitably estopped from arguing that Harris was required to inform it of his religious objections to vaccination. But Harris did not raise equitable estoppel until his reply in support of reconsideration, and the trial court was well within its discretion to reject this untimely raised legal theory. See Wilcox v. Lexington Eye Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005) (CR 59 does not permit a plaintiff to propose new legal theories that could have been raised before entry of an adverse decision); cf. Park Place Motors, Ltd. v. Elite Cornerstone Constr., LLC, 18 Wn. App. 2d 748, 754, 493 P.3d 136 (2021) (party waived argument that it did not raise until its reply brief in support of reconsideration). Harris does not show that the trial court abused its discretion by denying reconsideration.

[4] Harris relies on Ringhofer v. Mayo Clinic, Ambulance, 102 F.4th 894 (8th Cir. 2024), to support his claim that he was entitled to a religious exemption. Ringhofer was an appeal from a dismissal under Fed. R. Civ. P. 12(b)(6), and thus, the issue before the court was the adequacy of the plaintiffs' complaint. See 102 F.4th at 898, 900. As discussed, supra note 1, Harris's complaint was dismissed under CR 56, not CR 12(b)(6). Accordingly, Ringhofer, which in any event is nonbinding, is also inapposite.

IV

As a final matter, Harris argues that the trial court erred by dismissing his claims against Allen. This is so, Harris asserts, because Allen "was a 'Covered Person' entity pursuant to the PREP Act," and thus, the PREP Act did not immunize Allen from suit.

But Allen attested at summary judgment that he acted at all relevant times in his capacity as the manager of CB Solutions, a limited liability company (LLC) and the entity that employed—then terminated—Harris. Harris does not point to any evidence in the record to the contrary, and he does not explain why personal liability should attach to Allen. Cf. Dickens v. All. Analytical Labr'ys., LLC, 127 Wn. App. 433, 440, 111 P.3d 889 (2005) (an LLC must act through its members or managers; to reach them personally, an employee must show that the LLC form was intentionally used to violate or evade a duty and that disregarding the veil is necessary and required to prevent an unjustified loss to the employee). Accordingly, even assuming without deciding that the PREP Act did not immunize Allen from Harris's lawsuit, Harris fails to show that Allen's dismissal from that lawsuit was improper.

We affirm.

Mann, J.

WE CONCUR:

ACJ

APPENDIX 3

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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April 28, 2025

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Case #: 868161
Kevin Harris, Appellant v. CB Solutions, LLC & Daniel Allen, Respondents
Snohomish County Superior Court No. 22-2-03565-8

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal.

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Lea Ennis
Court Administrator/Clerk

ejg

c: Honorable Marybeth Dingledy

APPENDIX 4

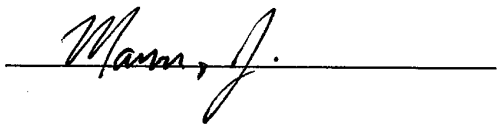
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KEVIN HARRIS, Appellant, v. CB SOLUTIONS, LLC and DANIEL ALLEN, Respondents.	No. 86816-1-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Kevin Harris moved to reconsider the court's opinion filed on April 28, 2025. The panel has determined that the motion for reconsideration should be denied. Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



APPENDIX 5

LEA ENNIS
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The Court of Appeals
of the
State of Washington

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June 13, 2025

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Case #: 868161
Kevin Harris, Appellant v. CB Solutions, LLC & Daniel Allen, Respondents
Snohomish County Superior Court No. 22-2-03565-31

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Lea Ennis
Court Administrator/Clerk

ejg

c: Honorable Marybeth Dingledy
Reporter of Decisions.

KEVIN HARRIS - FILING PRO SE

July 14, 2025 - 6:30 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86816-1
Appellate Court Case Title:	Kevin Harris, Appellant v. CB Solutions, LLC & Daniel Allen, Respondents
Superior Court Case Number:	22-2-03565-8

The following documents have been uploaded:

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- admin@knowlinglaw.com
- tim@knowlinglaw.com

Comments:

This is a Petition for Review by the WA State Supreme Court

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