NO. 88218-5

SUPREME COURT OF THE STATE OF WASHINGTON

CERTIFICATION FROM UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON .
AT TACOMA

IN

LARRY C. OCKLETREE,
Plaintiff,
v.
FRANCISCAN HEALTH SYSTEM, a Washington Corporation D/B/A ST. JOSEPH HOSPITAL, and JOI-IN and JANE DOE(s) 1-10,
Defendants.

AMICUS CURIAE BRIEF OF THE WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION AND LEGAL VOICE

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I. INTRODUCTION AND IDENTITY OF AMICUS CURIAE

The Washington Employment Lawyers Association ("WELA") is an organization of Washington lawyers devoted to protecting employee rights. WELA is a chapter of the National Employment Lawyers Association. Legal Voice is a regional non-profit public interest organization that works to advance the legal rights of women. *See* Motion for Leave to Appear as Amicus Curiae.

The Plaintiff, Larry Ockletree, filed suit in federal court alleging that he was discriminated against on the basis of a disability and race. He filed suit under federal and state law. The Defendant denies the allegations. The Defendant moved to dismiss the state claim alleging that it was immune from damages pursuant to the religious organization exemption under the Washington Law Against Discrimination ("WLAD"), RCW 49.60.040(11)(hereinafter "religious organization exemption").

The Defendant also alleged a failure to timely exhaust federal administrative remedies as a prerequisite to the federal claims. The federal court certified to this court the questions addressing whether the religious organization exemption violated Article I, Section 11 and Section 12 of the Washington State Constitution.

Amici Curiae in this case focuses only on the independent state constitutional analysis under Article I, Section 12. Amici argues that the

religious organization exemption violates Article I, Section 12 under an independent state constitutional interpretation. Amici do not address the equal protection considerations under Article I, Section 12, and do not address Article I, Section 11.

II. SUMMARY OF ARGUMENT

The Washington Law Against Discrimination ("WLAD") prohibits discrimination on the basis of race, religion, national origin, gender, disability, age, marital status, and sexual orientation. The WLAD mandates that it be construed liberally for the accomplishment of its declared purposes. RCW 49.60.020. The statute embodies a public policy of "the highest priority." *Xieng v. Peoples Nat'l Bank,* 120 Wn.2d 512, 521, 844 P.2d 389 (1993) (*quoting Allison v. Housing Auth.,* 118 Wn.2d 79, 86, 821 P.2d 34 (1991)). The statute nevertheless provides complete immunity for employers with less than eight employees and "religious or sectarian organizations not organized for private profit" (hereinafter "religious organizations"). RCW 49.60.040(11).

Many religious organizations are separately incorporated entities. They include hospitals, universities, schools K-12, Catholic Community Services, CRISTA Ministries, the YMCA, the Salvation Army, St. Vincent DePaul, as well as churches, synagogues, and mosques. Religious organizations and religious hospitals in particular employ tens of thousands employees in the State of Washington and generate billions of dollars of

annual revenue. In most instances, their employees perform the same functions performed by employees of comparably sized non-profit corporations that are not religiously affiliated and for-profit businesses in the same industry or field. Indeed, apart from its religious association, the Defendant in this case is virtually indistinguishable from a large public or private non-sectarian hospital.

The Free Exercise Clause of First Amendment to the United States Constitution protects religious organizations from government interference with their decisions involving "ministers." *See Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, ___ U.S. ___, 132 S. Ct. 694, 703 (2012) ("The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own"). Insofar as its rights under the First Amendment are respected, there is no constitutional difference between the Franciscan Health System (or Providence Hospital) and large public or private non-profit hospitals. Any privilege or immunity to religious organizations beyond those constitutional parameters confers a special benefit upon a class of employers who are large, powerful, and control large concentrations of wealth, and thus violates Article I, Section 12 of the Washington Constitution.

When religious organizations act beyond the scope of their constitutional protections, immunity from discrimination has no more

justification than it would for the high tech, aerospace, or renewable energy industries. Special immunity for favored corporate classes such as these is exactly the type of abuse that Article I, Section 12 was designed to prevent. In this case, the immunity relates to liability as employers under the WLAD. But immunity for religiously affiliated hospitals for medical malpractice, for example, is conceptually no different. All immunities for powerful and favored classes are equally repugnant to Article I, Section 12 of the Washington Constitution.

The religious exemption under the WLAD allows religious organizations to discriminate beyond the parameters of their constitutional protection. It allows a religiously affiliated employer to blatantly discriminate on the basis of protected classifications (*e.g*, based on race or disability) against employees who are not "ministers" even when such discrimination is unrelated to any religious purpose. The breadth of any constitutional protections afforded religious organizations need not be decided in this case. In this case, it is not contested that discrimination against a security guard on the basis of disability or race is beyond any constitutional protections afforded by the First Amendment. The religious organization immunity under the WLAD is unconstitutional as applied to discriminatory conduct that exceeds constitutional protections guaranteed by the First Amendment to the United States Constitution.

Article I, Section 12 of the Washington Constitution guarantees that

all inhabitants of the State of Washington enjoy equal protection of the laws. An equal protection analysis under Article I, Section 12 borrows heavily from federal jurisprudence, and generally protects disadvantaged minorities from the discriminatory animus of the majority. Under an equal protection analysis, a heightened level of scrutiny is afforded to historically disadvantaged classes to protect them from invidious discrimination.

Article I, Section 12 also recognizes an independent state constitutional interpretation which prohibits conferring special benefits in the form of "privileges or immunities" to a "citizen, class of citizens, or corporation" which are not given on equal terms to all citizens or corporations. But unlike its equal protection mirror image, an independent state constitutional analysis protects majority interests from the abuse of power favoring powerful minority special interests. The interests of the majority under an independent state privileges or immunities interpretation are entitled to the same level of protection as are disadvantaged minority groups under an equal protection analysis. In particular, the Constitution's explicit identification of corporations as a potential threat to majority interests justifies heightened scrutiny when privileges or immunities are awarded to wealthy or powerful corporations. An immunity granted to a corporation with a large concentration of wealth can only be justified by a compelling state interest which is narrowly tailored to achieve the asserted state interest. The immunity granted to religious organizations in this case fails that test

(and every other test that has been used by the Court).

Neither Article IV, Section 2 nor the Fourteenth Amendment to the U.S. Constitution provide protection similar to the protection afforded by an independent constitutional interpretation of the privileges or immunities provision. A truly independent state constitutional analysis should not be guided by federal jurisprudence, and Washington case law which relies upon a federal "privileged or immunities" clause for guidance should not be relied upon.

III. ARGUMENT

A. Religious Non-Profit Corporations Qualify for an Independent Constitutional Interpretation Under Article I, Section 12.

Article I, Section 12 of the Washington Constitution guarantees that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall equally belong to all citizens, or corporations." The structure of the state constitutional "privileges or immunities" clause in Article I, Section 12 is very different than the structure of the equal protection clause of the 14th Amendment. The text of the federal constitution shows concern with "majoritarian threats of invidious discrimination against non-majorities," whereas the state provision "protects as well against laws serving the interest of special classes of citizens to the detriment of the interests of all citizens." *Anderson v. King County,* 158 Wn.2d 1, 14, 138 P3d 963 (2006).

In *Grant County Fire Protection District v. City of Moses Lake*, 150 Wn.2d 791, 83 P.3d 419 (2004), the Court confirmed that Washington State's framers were concerned with "undue political influence exercised by those with large concentrations of wealth, which they feared more than they feared oppression by the majority." *Id.* at 808. "[T]he historical context as well as the linguistic differences indicates that the Washington State provision requires independent analysis from the federal provision when the issue concerns favoritism." *Id.* at 809.

RCW 40.60.040(11) grants a class of religious non-profit corporations blanket immunity from illegal discrimination. The statute also grants immunity to employers with less than eight employees. Employers with less than eight employees are by definition small; typically they are sole proprietorships with relatively small amounts of revenue and profit. They do not qualify as a class comprised of powerful corporations possessing large concentrations of wealth for the purpose of an independent state constitutional analysis under Article I, Section 12. In contrast, religious organizations in Washington State employ tens of thousands of employees and have great concentrations of wealth.[1] The class includes not only

[1] In particular, the Defendant Franciscan Health System is a licensed non-profit corporation in the State of Washington. It operates five full-service hospitals in Washington. *See* Franciscan Health System, Facts and Figures, *available at* http://www.fhshealth.org/About-us/Franciscan-Facts-and-Figures/. In 2011, Franciscan Health System employed nearly 9,500 people, generated more than $1.4 billion in total revenue, and possessed more than $738 million in net assets. *See* ACLU Amicus Brief, Appendix C. Other Franciscan non-profit corporations in the State of Washington include:

religious hospitals but also major universities, such as Seattle University, Gonzaga University, Pacific Lutheran University, and Seattle Pacific University. These Universities employ tens of thousands of employees and generate hundreds of millions of dollars in annual revenue. *See* ACLU Amicus Brief, Appendix C. Thus, religious organizations do qualify for an independent state constitutional analysis.

B. Corporations with Large Concentrations of Wealth are Subject to a Heightened Scrutiny for the Purpose of an Independent Constitutional Analysis Under Article I, Section 12.

The Washington Territorial Legislature was known for granting special favors "which were mostly monopolies for roads, bridges, trails, ferries, and the like." *See* Zellers, P. Andrew Rorholm, *Independence for Washington State's Privileges and Immunities Clause,* 87 Wash. L. Rev. 331 (2012), *citing* Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 26-27 (G. Alan Tarr ed., 2002). Article I, Section 12 of the Washington Constitution was enacted to prohibit this type

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Franciscan Coordinated Care Network LLC, Franciscan Digestive Care Associates PS, Franciscan Endoscopy Center Gig Harbor Inc, Franciscan Endoscopy Center Tacoma Inc., Franciscan Foundation, Franciscan Health System, Franciscan Medical Group, Franciscan Northwest Physicians Health Network LLC., Franciscan Service Corporation Dba Franciscan Service, Franciscan Sisters of the Eucharist, Franciscan Vineyards Inc., Franciscans of Our Lady of the Poor, Franciscans of Our Lady of the Poor Placement, Secular Franciscan Order St Frances Cabrini Fraternity, the Franciscan Bonaventure Group LLC., and The Franciscan Monastery of St Clare. *See* http://www.sos.wa.gov/corps/search_results.aspx? search_ type = simple&criteria =all&name_type=contains&name=Franciscan+&ubi=. All of the employees of these corporations have no protection under the Washington Law Against Discrimination.

of favoritism. The Privileges or Immunities provision was modeled after the Oregon Constitution, but the Washington constitution differs significantly because it includes "corporations" as a potential recipient of the favors it meant to prohibit. *Id.* Corporations were explicitly named in the Privileges or Immunities provision to protect the majority from the abuse of power favoring corporations with large concentrations of wealth. *See Grant County Fire Protection District v. City of Moses Lake*, 150 Wn.2d 791, 809, 83 P.3d 419 (2004) ("Washington's addition of the reference to corporations demonstrates that our framers were concerned with undue political influence exercised by those with large concentrations of wealth, which they feared more than they feared oppression by the majority").

In a traditional equal protection analysis, a disadvantaged minority group is protected from the invidious discriminatory bias of the majority. Toward that end specifically identified classes are afforded heightened protection from the majority; typically that discrimination is only justified based upon a compelling state interest which is narrowly tailored to achieve that interest. *See State v. Smith,* 117 Wn.2d 263, 277, 814 P. 2d 652 (1991)("Under the strict scrutiny test, a law will be upheld only if it is shown to be necessary to accomplish a compelling state interest. Under the intermediate or heightened scrutiny test, the challenged law must be seen as furthering a substantial interest of the State").[2]

[2] A strict scrutiny standard under an equal protection analysis is applied to *all* suspect classifications, including those purported to serve

An independent state constitutional interpretation under Article I, Section 12, however, is not designed to protect a disadvantaged minority class from the majority. Just the opposite, it is designed to protect the majority from special favors granted to powerful minority interests. Because corporations were specifically identified in Article I, Section 12 as a potential threat to majority interests, when benefits are conferred to corporations with large concentrations of wealth the interests of the majority are entitled to the same level of protection afforded disadvantaged minority groups under an equal protection analysis. A "privilege or immunity" granted to a corporation with large concentrations of wealth can only be justified by a compelling state interest which is narrowly tailored to meet the interest involved. *Cf Amunrud v. Board of Appeals*, 158 Wn.2d 208, 220, 143 P. 3d 571 (2006)("Strict scrutiny requires that the infringement is narrowly tailored to serve a compelling state interest"). Under this standard, the blanket immunity under WLAD can not be sustained.[3] There exists no constitutional state interest in

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laudable ends, to "'smoke out' illegitimate uses' of the classification and assure that the government "is pursuing a goal important enough to warrant use of a highly suspect tool." *Johnson v. California*, 543 U.S. 499, 506 (2005) (citation omitted) (holding that strict scrutiny applies to all racial classifications, even those purportedly to benefit racial minorities).

[3] The application of a rational basis test, arbitrary or capricious standard, or any similar test would render the independent constitutional analysis of privileges or immunities superfluous because all legislation is subject to these tests anyway. "[A]ll legislation must have at least a rational basis." *Petrey v. Flaugher*, 505 F. Supp. 1087, 1090 (E.D. Ky. 1981) (*quoting Williamson v. Lee Optical*, 348 U.S. 483, 488 (1955)); *Idris v. City of Chicago, Ill.*, 552 F.3d 564, 566 (7th Cir. 2009) ("If a law is arbitrary, then it might flunk the rational-basis test that applies to all legislation....").

promoting religion generally, and any such attempt would violate the Establishment Clause of the First Amendment. *See Lee v. Weisman,* 505 U.S. 577, 810 (1992); *Texas Monthly Inc., v. Bullock,* 489 U.S. 1, 14-15 (1989).

Similarly, there exists no compelling justification for granting immunity to religiously affiliated employers from liability for discrimination or harassment in the workplace for which their non-religious counterparts would be liable. It seems incomprehensible that under state law a corporate CEO could with financial impunity sexually harass a nurse or receptionist, or hospital could assign an African American hospital technician the most menial tasks on the basis of race without legal accountability. Yet immunity for that conduct is the unavoidable consequence of the Defendant's legal argument.

Beyond the parameters of any First Amendment protections (which are inapplicable in this case), the Defendant is virtually indistinguishable from a large non-religious affiliated non-profit private or public hospital.

> Charitable enterprises are no longer housed in ramshackly wooden structures. They are not mere storm shelters to succor the traveler and temporarily refuge those stricken in a common disaster. Hospitals today are growing into mighty edifices in brick, stone, glass and marble. Many of them maintain large staffs, they use the best equipment that science can devise, they utilize the most modern methods in devoting themselves to the noblest purpose of man, that of helping

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"[C]onstitutional provisions shall not be interpreted as mere redundancies" and "the constitution, like statutes, should be construed so that no portion is rendered superfluous." *Farris v. Munro*, 99 Wn.2d 326, 333, 662 P.2d 821, 826 (1983). To serve any purpose whatsoever the Privileges or Immunities Clause must require heightened scrutiny.

> one's stricken brother. But they do all this on a business basis, submitting invoices for services rendered-and properly so.
>
> And if a hospital functions as a business institution, by charging and receiving money for what it offers, it must be a business establishment also in meeting obligations it incurs in running that establishment. One of those inescapable obligations is that it must exercise a proper degree of care for its patients, and, to the extent that it fails in that care, it should be liable in damages as any other commercial firm would be liable.

Flagiello v. Pennsylvania Hosp., 417 Pa. 486, 493-95, 208 A.2d 193, 196-97 (1965)("If there was any justification for the charitable immunity doctrine when it was first announced, it has lost that justification today"). Just like a religious hospital must be liable if it fails to render the proper degree of care, so to must it be liable for discriminatory acts unprotected by the First Amendment.

In *Larson v. City of Shelton*, 37 Wn.2d 481, 224 P2d 1067 (1950), this Court recognized that state law regulated the sale of goods and merchandise by peddlers, and required that a license fee be paid depending upon the nature of the peddler. The state statute had no application, however, to a city that independently regulated the sale of goods and merchandise within its limits. The City of Shelton required a $500 bond for peddlers but exempted veterans from having to pay the bond. This Court found that exemption of veterans was "a violation of a constitutional provision prohibiting the granting to a class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens." *Id.* at 489. The

"legitimate and proper feeling of gratitude toward [veterans]" did not justify granting a special exemption in their favor. *Id.* at 490. Religious organizations are not more deserving of gratitude than veterans who risked their lives for their country, and the immunity granted to them is no more deserving of constitutional protection.[4]

C. An Independent State Constitutional Interpretation Does Not Require that Privileges or Immunities Relate to Fundamental Rights.

Washington Courts appear to have defined "privileges or immunities" in reference to fundamental rights, but without an independent state constitutional analysis. *Grant County II,* 150 Wn.2d at 812-13 (*quoting State v. Vance,* 29 Wash. 435, 458, 70 P. 34 (1902). *See also Am. Legion Post No 149 v. Dep't of Health*,164 Wn.2d 570, 608 (2007)(the prohibition against smoking tobacco in a place of employment did not qualify as a "privilege"

[4] When exemptions confer benefits on a small group to the detriment of their peers and the public without sufficient justification, those exemptions from regulation have historically been invalidated under this state's Privileges or Immunities Clause. *See State v. Robinson Co.*, 84 Wash. 246 (1915) (state law that exempted cereal and flour mills and authorized them to sell mixed feeding stuffs while placing conditions on other persons, companies, corporations, or agents selling the same thing violated Article I, Section 12); *City of Seattle v. Dencker*, 58 Wash. 501 (1910) (Seattle ordinance which imposed a tax on the sale of certain goods by machine but not on merchants selling the same goods unconstitutional under Article I, Section 12); *Sherman Clay & Co. v. Brown*, 131 Wn. 679 (1924) (statutory provision that prohibited all secondhand merchants from disposing of goods for ten days but exempted from the waiting period merchants selling stoves, furniture, or entire contents of houses violated Article I, Section 12); *City of Seattle v. Rogers*, 6 Wn.2d 31 (1940) (ordinance that exempted the Seattle Community Fund from a provision applicable to other charities violated Article I, Section 12); *Ralph v. City of Wenatchee*, 34 Wn.2d 638 (1949) (ordinance requiring license fees for only nonresident photographers violated Article I, Section 12).

within the meaning of Article I, Section 12 because the right to smoke in a place of employment was not a "fundamental right") *citing State v. Vance,* 29 Wash. 435, 458, 70 P. 34 (1902). In *Vance* the Court considered the constitutionality of a statute which allowed attorneys to recommend the appointment of jury commissioners. *Vance*, 29 Wash at 457. The Court ruled that "[t]he right given to the members of the bar to simply recommend eligible persons for selection as commissioners" was not a "privilege" within the meaning of Article I, section 12 because it was not a fundamental right. *Id.* at 458. But the Court in *Vance* interpreted the terms "privileges or immunities" "*as they are used in the constitution of the United States . . . .*" *Id.* (emphasis added). *See also Cruikshank v. Baker*, 2 Wn.2d 145, 151 (1940)("By analogy these words as used in the state constitution should receive a like definition and interpretation as that applied to them when interpreting the federal constitution") (quoting *Vance*); *Bussell v. Gill,* 58 Wash. 468, 476, 108 P. 1080 (1910)(same).

It is unclear whether the Court in *Vance* was referring to the"Privileges or Immunities" clause contained in Article IV, Section 2 or the similar clause in the Fourteenth Amendment. In either case, it is clear that the Court in *Vance* made no effort at an independent state constitutional interpretation of the terms "privileges and immunities." The language and purpose of the privileges and immunities clause(s) in the federal constitution are entirely different than the state constitution, Article I, Section 12. *Grant*

County II, 150 Wn.2d at 806-07 ("Analyzing the texts of the federal and state constitutions, it becomes apparent that the federal constitution is concerned with majoritarian threats of invidious discrimination against non-majorities, whereas the state constitution protects as well against laws serving the interest of special classes of citizens to the detriment of the interests of all citizens"). Therefore, any restriction of Article I, Section 12 to fundamental rights is without any independent state constitutional rationale.[5]

Even if construed as requiring a fundamental right, the religious exemption runs afoul of the Article I, Section 12 prohibition against minority favoritism. The language in *Vance* describing "fundamental rights" relates not to the benefit conferred, but to the adverse consequences associated to those being denied a benefit. One of the rights described in *Vance* as "fundamental" is the right "to enforce other personal rights." *Id.* at 458. The right to be free from invidious discrimination is a personal right recognized as "fundamental" under Article I, Section 12. The Washington Legislature has declared that discrimination menaces a free and democratic state. *See*

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[5] Although not applicable to an independent state constitutional interpretation, the federal privileges and immunities clause of Article IV, Section II subjects legislation showing favoritism to heightened scrutiny. Zellers, P. Andrew Rorholm, *Independence for Washington State's Privileges and Immunities Clause*, 87 Wash. L. Rev. 331 fn. 87 (2012). "In deciding whether the discrimination bears a close or substantial relationship to the State's objective, the Court has considered the availability of less restrictive means." *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 284 (1985). Professor Chemerinsky notes, "Thus far, the Court has not found that any law meets this rigorous test." Chemerinsky, Erwin: *Constitutional Law: Principles and Policies* §5.5.2 (3d ed. 2006).

RCW 49.60.010.

D. The Exemption Conferred Under the WLAD is an "Immunity" Under Article I, Section 12.

To the extent that Article I, Section 12 implicates fundamental rights, those rights are implicated only insofar as a "privilege" is awarded. Fundamental rights are not implicated for the award of an "immunity" - such as the WLAD's religious exemption.

The Defendant correctly argues that Washington courts have not yet distinguished between "privileges" and "immunities," and that the Plaintiff argues that the religious exemption under the statute is a privilege. Def. Brief, at 20 fn 7. Yet, the constitutional amendment speaks of "privileges *or* immunities." (Emphasis added). Use of the disjunctive suggests that the word "privileges" and the word "immunities" differ in meaning. '"When interpreting constitutional provisions, we look first to the plain language of the text and will accord it its reasonable interpretation. . . . The words of the text will be given their common and ordinary meaning, as determined at the time they were drafted.'" *WOHVA v. State*, ___Wn.2d ___, ___, 290 P. 3d 954 (2012), *citing Wash. Water Jet Workers Ass'n v. Yarbrough,* 151 Wn.2d 470, 477, 90 P.3d 42 (2004). *See also Madison v. State*, 161Wn.2d 85, 118, 163 P.3d 757 (2007)(J.M. Johnson concurring) ("an independent examination of article I, section 12 should be conducted in accordance with its plain language"). Black's Law Dictionary defines immunity: "Exemption, as from

serving in an office, or performing duties which the law generally requires other citizens to perform." Revised Fourth Edition, West Publish., 1968. Webster's 1913 Dictionary defines "immunity:" "Freedom or exemption from any charge, duty, obligation, office, tax, imposition, penalty, or service; a particular privilege; . . . the immunities of the clergy." See http://www.webster-dictionary.org/definition/immunity.

Within the meaning of Article I, Section 12 of the Washington Constitution, an immunity is distinct from a privilege. *See* Thompson, Jonathan, *The Washington Constitution's Prohibition on Special Privileges and Immunities: Real Bite for "Equal Protection" Review of Regulatory Legislation,?* 69 Temp. L. Rev. 1247 (1996) (distinguishing between "privileges" cases and "immunity" cases. "[The immunity cases] demonstrate that sparing an individual or a class from a generally applicable regulatory burden is offensive to state constitutional values even where no private competitive benefits necessarily flow from that exemption"), cited in *Am. Legion Post No 149 v. Dep't of Health*,164 Wn.2d 570, 607 (2007).

This case broadly addresses the issue of the extent to which the legislature can constitutionally grant immunities to a class of powerful special interests, and corporations in particular. In this case, the immunity extends to liability under the WLAD. But in another pending case, the issue extends to immunity from medical malpractice for claims brought by minors more than three years after the alleged negligent act. *See Schroeder v. Weighann, M.D.,*

et al. Sup. Ct. No. 87207-4 (Review pending). In future cases, immunity could extend to the shortening of the statute of repose for the aerospace industry to lure the construction of a new plant. *See* http://blog.al.com/wire/2013/03/legislation_limiting_airbus_li.html.

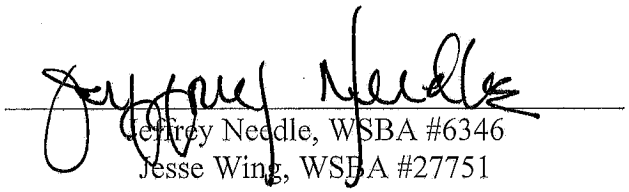
The Washington Constitution was ratified at a time when governmental favors to powerful special interest groups were running rampant. It was understood that this practice was a corruption of the democratic process. Article I, Section 12 was enacted in direct response to those concerns. It was enacted with the remedial purpose to create a restraint on the influence of powerful and wealthy special interest groups. That restraint is today as compelling and necessary as when the state constitution was first ratified. Immunity under the WLAD for religious non-profit corporations violates both the letter and spirit of Article I, Section 12 of the Washington Constitution.

IV. CONCLUSION

The religious exemption under the WLAD violates Article I, Section 12 of the Washington constitution insofar as it affords immunity from liability beyond the constitutional protections recognized under the First Amendment to the United States Constitution.

Respectfully submitted this 9th day of April, 2013.

WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION



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DECLARATION OF SERVICE

I, Kathleen Kindberg, hereby certify under penalty of perjury that under the laws of the State of Washington that on the 9th day of April, 2013, I caused a true and correct copy of the foregoing document, Amicus Curaie Brief of the Washington Employment Lawyers Association and LEGAL VOICE, and Motion to Appear to be delivered by email to the following counsel of record:

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