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No. 103394-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LISA A. BRANSON, et al.,
Appellants-Plaintiffs,

v.

WASHINGTON FINE WINE & SPIRITS, LLC,
Respondent-Defendant.

***AMICI CURIAE* BRIEF OF RETAIL LITIGATION
CENTER, INC., NATIONAL RETAIL FEDERATION,
AND WASHINGTON RETAIL ASSOCIATION**

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TABLE OF CONTENTS

I.	IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
II.	ISSUES ADDRESSED BY <i>AMICI</i>	8
III.	ARGUMENT	11
A.	The EPOA’s text, purpose, and history do not support Plaintiffs’ expansive interpretation of “job applicant.”	11
B.	To have standing, an EPOA plaintiff’s interest must accord with the Act’s purpose of protecting workers.....	20
1.	The EPOA’s zone of interest depends on its “purpose and operation.”	21
2.	To show a concrete injury, a procedural violation is insufficient.	23
3.	Plaintiffs failed to establish a concrete injury to an EPOA interest.	25
C.	If any person can be a job applicant, the EPOA yields absurd results.....	28
IV.	CONCLUSION	34

TABLE OF AUTHORITIES

	CASES
	Page(s)
CASES	
<i>Allan v. Univ. of Washington</i> , 140 Wn.2d 323 (2000).....	24
<i>Benton Cnty. Water Conservancy Bd. v. Washington State Dep’t of Ecology</i> , 546 P.3d 394 (Wash. 2024).....	24
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	31
<i>Branson v. Port of Seattle</i> , 152 Wn.2d 862 (2004).....	20
<i>Chewy, Inc. v. U.S. Dep’t. of Lab.</i> , 69 F.4th 773 (11th Cir. 2023).....	2
<i>City of Seattle v. Long</i> , 198 Wn.2d 136 (2021).....	33
<i>Dept. of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1 (2002).....	11, 12
<i>Fortgang v. Woodland Park Zoo</i> , 187 Wn.2d 509 (2017).....	18
<i>Gabelein v. Diking Dist. No. 1 of Island Cnty. of State</i> , 182 Wn. App. 217 (2014)	31

<i>In re Est. of Duxbury</i> , 175 Wn. App. 151 (2013)	31
<i>Kelley v. Boeing Co.</i> , 20 Wn. App. 2d 1028 (2021) (unpub. op.)	22
<i>Keodalah v. Allstate Ins. Co.</i> , 194 Wn.2d 339 (2019)	12
<i>Kirtsaeng v. John Wiley & Sons, Inc.</i> , 568 U.S. 519 (2013)	2
<i>Maslonka v. Pub. Util. Dist. No. 1 of Pend Oreille Cnty.</i> , 533 P.3d 400 (Wash. 2023)	20
<i>South Dakota v. Wayfair, Inc.</i> , 585 U.S. 162 (2018)	1
<i>Spokane Cnty. Health Dist. v. Brockett</i> , 120 Wn.2d 140 (1992)	19
<i>Spokane Cnty. v. Dep’t of Fish & Wildlife</i> , 192 Wn.2d 453 (2018)	13
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	24
<i>State v. Elgin</i> , 118 Wn.2d 551 (1992)	28
<i>State v. Evergreen Freedom Found.</i> , 192 Wn.2d 782 (2019)	29
<i>State v. Schomber</i> , 23 Wn. 573, 576 (1900)	31

State v. Welch,
595 S.W.3d 615 (Tenn. 2020)2

Wallace v. Marten Transport, LTD.,
No. 2:24-CV-00872-RAJ, 2024 WL
4723751 (W.D. Wash. Nov. 8, 2024)26

*Washington State Hous. Fin. Comm’n v.
Nat’l Homebuyers Fund, Inc.*,
193 Wn.2d 704 (2019).....21

Wright v. HP Inc.,
No. 2:24-CV-01261-MJP, 2024 WL
4678268 (W.D. Wash. Nov. 5, 2024) 14

STATUTES

Cal. Lab. Code § 432.3(d)(4)..... 18

Cal. Lab. Code § 432.3(m)(2)..... 18

Class Action Fairness Act of 2005,
28 U.S.C. §§ 1332(d), 1453, 1711–15 30

Colo. Rev. Stat. § 8-5-203..... 19

RCW 2.48.18026

RCW 26.28.06025

RCW 49.58.005 12, 14, 22, 26

RCW 49.58.010(5)..... 32

RCW 49.58.050 13, 23

RCW 49.58.0608, 13, 23

RCW 49.58.070	8, 9
RCW 49.58.110	8, 10, 19
RCW 49.58.110(4).....	4, 8, 9
RCW 50.20.080	27

OTHER AUTHORITIES

National Retail Federation, <i>The Economic Contribution of the U.S. Retail Industry</i> (March 2024).....	21
S.B. 5761, 67th Leg., Reg. Sess. (Wash. 2022).....	16, 17
Washington Retail Association, <i>Retail plays a major role in support of the Washington State economy</i>	7

**I. IDENTITY AND INTEREST OF
*AMICI CURIAE***

The Retail Litigation Center, Inc., is a 501(c)(6) nonprofit trade association that represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The Retail Litigation Center provides courts with the perspective of the retail industry on important legal issues affecting its members, and on potential industry-wide consequences of significant court cases. Since its founding in 2010, the Retail Litigation Center has filed more than 250 amicus briefs on issues of importance to retailers. Its amicus briefs have been helpful to courts throughout the United States, as evidenced by citations to Retail Litigation Center amicus briefs in numerous precedential opinions. *See, e.g., South Dakota v. Wayfair, Inc.*, 585

U.S. 162, 184 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013); *State v. Welch*, 595 S.W.3d 615, 630 (Tenn. 2020); *Chewy, Inc. v. U.S. Dep't. of Lab.*, 69 F.4th 773, 777–78 (11th Cir. 2023). Its member retailers employ millions of workers throughout the United States, provide goods and services to hundreds of millions of consumers, and account for more than a trillion dollars in annual sales.

The National Retail Federation (“NRF”) is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. NRF empowers the industry that powers the economy. Retailers represent the nation’s largest private sector employer, contributing \$5.3 trillion to the annual GDP

and supporting more than one in four U.S. jobs—55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating and communicating the powerful impact retail has on local communities and global economies. NRF regularly submits filings in cases raising significant legal issues for the retail community.

The Washington Retail Association serves as primary stewards of Washington's retail experience with a mission to safeguard the interests of retailers representing all sectors and sizes from the largest national chains to small independent businesses. The retail industry accounts for \$200 billion in annual taxable sales in Washington and pays over \$19.8 billion annually in wages supporting Washington's economy. Washington Retail Association works to advance and protect the jobs of nearly 400,000 employees and the

employers who provide them.

The Retail Litigation Center, National Retail Federation, and Washington Retail Association (collectively, “*Amici*”) have a strong interest in this case, which presents the important question of the meaning of the undefined term “job applicant” in Washington’s Equal Pay and Opportunities Act (EPOA). RCW 49.58.110(4). *Amici*’s membership includes hundreds of employers hiring thousands of workers in Washington each year that will be affected by the Court’s decision.

Plaintiffs advance a virtually unconstrained definition of the term “job applicant,” saying: any *person* who applies for a job—no matter whether the person is legally capable of accepting the job or even interested in obtaining new employment—is a “job applicant.” *See* Pls.’ Reply Br. at 8 n.4. So long as the applicant is a “person” and not “deceased,” Plaintiffs contend the

person can qualify as a job applicant. *Id.* And under that sweeping understanding of the term, since the Legislature added the wage transparency provisions to the EPOA on January 1, 2023, more than 200 putative class action EPOA lawsuits have been filed across the State. These cases generally allege technical violations in discrete job applications, even where the information omitted was available elsewhere or promptly provided once the employer was made aware that it was missing in a particular posting. Washington employers—including state and local *government* employers regulated by the EPOA—have struggled to achieve perfect compliance with the novel wage transparency requirements when navigating the vast array of diverse employment portals that proliferate throughout the internet (e.g., Indeed.com, WorkDay, Inc., LinkedIn).

Roughly 150 of the Washington cases were filed

by one law firm and, of those, roughly 100 were filed in the name of only *nine* individual plaintiffs. Some of those individuals have filed as many as 20 lawsuits—an endeavor that has been rewarding as numerous cases have settled with “service” awards of \$10,000 to \$20,000 for each named plaintiff, on top of millions of dollars in attorneys’ fees paid to a small number of plaintiffs’ lawyers. Based on estimates generated from these lawsuits, more than 200 employers in Washington face in the ballpark of *half a billion dollars* in potential liability, with that number growing as new lawsuits are filed with regularity.

Every industry across Washington’s economy has been impacted by this litigation, with the retail industry hit particularly hard. Where there are employment opportunities, there are job postings, and in Washington, that now invites litigation. Given that

the retail industry supports one in four American jobs and is the nation's largest private-sector employer, it should be unsurprising that retailers across the State of Washington directly offer hundreds of thousands of jobs and indirectly support millions more.¹ What is surprising is the litigation risk that Washington employers now face while attempting in good faith to comply with the statute, as Plaintiffs' firms have weaponized the statutory damages provision.

Plaintiffs' firms have targeted retailers across all segments of Washington's economy: from AutoZone Parts to Whole Foods, from Target to Nordstrom and 7-Eleven, and the list goes on. And the targets extend well beyond retail to restaurants, real estate, senior living,

¹ Washington Retail Association, *Retail plays a major role in support of the Washington State economy*, <https://washingtonretail.org/news/retail-facts-figures/>.

technology, transportation, and many more.² Plaintiffs’ interpretation of RCW 49.58.110 is creating havoc for retailers and other employers throughout the State. *Amici* have an interest in ensuring that the EPOA protects workers, not those looking for a quick payday at retailers’ and their employees’ expense.

II. ISSUES ADDRESSED BY *AMICI*

The question certified to this Court involves RCW 49.58.110(4) of the EPOA—which says, “[a] job applicant or an employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 for violations of this section.” RCW 49.58.060 provides for investigations by the Department of Labor and Industries (“L&I”), and for civil penalties of up to \$500 (for a “first violation”) or up

² A comprehensive list of the known class action lawsuits currently pending against Washington employers is provided in the *amicus* brief of the Association of Washington Business.

to \$1,000 or 10% of “the damages,” whichever is greater (for a “repeat violation”). RCW 49.58.070 provides for “statutory damages equal to the actual damages or five thousand dollars, whichever is greater.”

Plaintiffs ask this Court to interpret RCW 49.58.110(4) with a broad brush and to rule that any person, regardless of age, geographic location, qualifications or even interest in a job, is “entitled” to statutory damages from the “employer” in the amount of \$5,000 for any technical non-compliance with the EPOA in a published job posting.

In contrast, Defendant asks the Court to conclude that a “job applicant” is a person who applies for a job with the purpose of obtaining employment. The intent of the actor is baked into the term. Defendant explains that neither the EPOA nor its legislative history suggests that the Legislature intended the salary-

posting requirement to kick off legions of class actions brought by self-deputized litigants with no actual interest in the job in question—a result with the potential to cripple Washington businesses. Adopting Plaintiffs’ interpretation of the term “job applicant” would produce absurd consequences. And allowing plaintiffs with no concrete interests at stake to sue is inconsistent with state-law standing principles.

In support of Defendant, *Amici* present three arguments: (1) the text, history, and purpose of the EPOA all militate against extending protections to those who are ineligible for employment or uninterested in accepting offered employment; (2) Plaintiffs failed to establish that they have suffered a concrete injury to an interest that falls within the zone of interests that the EPOA protects; and (3) it would be absurd to interpret “job applicant,” RCW 49.58.110, to mean any person who

files a job application—including children, unqualified people, and people without any interest in accepting an offer of employment.

III. ARGUMENT

A. The EPOA’s text, purpose, and history do not support Plaintiffs’ expansive interpretation of “job applicant.”

According to Plaintiffs, “job applicant” means any person who files an application for employment, regardless of the applicant’s qualifications or intent in obtaining employment. *See* Reply Br. at 8 n.4. This broad definition has no basis in the text, purpose, or history of the EPOA. Plaintiffs’ interpretation of “job applicant” *contravenes* the EPOA.

Text. When interpreting a statute, this Court’s “fundamental objective is to ascertain and carry out the Legislature’s intent.” *Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9 (2002). To that end, the

Court examines not only the provision at issue, but also “related statutes or other provisions of the same act in which the provision is found.” *Id.* at 10.

In this case, the intent of the Legislature is clear: the text of the EPOA repeatedly and expressly extends protections to “women” to ensure “gender equality.” RCW 49.58.005. Nowhere does the text of the statute extend any protections to those who are unqualified for a job or who are uninterested in accepting offered employment. *Cf. Keodalah v. Allstate Ins. Co.*, 194 Wn.2d 339, 346 (2019) (refusing to find an implied right of action where a plaintiff is not “within the class for whose benefit the statute was enacted”). On the contrary, the EPOA is full of clues that the Legislature intended to protect only applicants with a genuine interest in obtaining employment.

For example, the Legislature established anti-

retaliation provisions in the EPOA. RCW 49.58.050. Those with no qualifications or zero interest in obtaining employment will have no fear of retaliation by an employer. Similarly, the Act empowers “L&I” to investigate complaints and, upon finding a violation of the Act, the Legislature requires the agency to “attempt to resolve the violation by *conference and conciliation*” before issuing a citation. RCW 49.58.060 (emphasis added). There is no need for “conference and conciliation” to protect the unqualified or uninterested. *Id.*

In short, allowing the unqualified and uninterested to pursue statutory remedies renders many key statutory protections superfluous, and “[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *See Spokane*

Cnty. v. Dep't of Fish & Wildlife, 192 Wn.2d 453, 458 (2018).

Purpose. Protecting people uninterested in obtaining new employment has nothing to do with the EPOA's stated purpose, which is to eliminate "a gap in wages and advancement opportunities among *workers* in Washington" and "to promote fairness among *workers*" by ensuring that employees are "compensated equitably." RCW 49.58.005 (emphasis added). These are "concrete, non-procedural rights for job applicants and employees." *Wright v. HP Inc.*, No. 2:24-CV-01261-MJP, 2024 WL 4678268, at *3 (W.D. Wash. Nov. 5, 2024). The EPOA does not "seek[] to prevent or redress" injuries like those alleged by Plaintiffs. *Id.* (rejecting argument that the EPOA is meant to prevent "lost valuable time" for those filing applications without a bona fide interest in accepting employment).

The Legislature made three specific “findings” to evidence its “intent,” *i.e.*, its purpose in passing the Act:

- (a) The long-held business practice of inquiring about salary history has contributed to persistent earning inequalities;
- (b) Historically, women have been offered lower initial pay than men for the same jobs even where their levels of education and experience are the same or comparable; and
- (c) Lower starting salaries translate into lower pay, less family income, and more children and families in poverty.

Id. Plaintiffs’ briefing extols the generous protections afforded by the EPOA to Washington’s workers. *See* Pls.’ Opening Br. at 35–36. And yet Plaintiffs expressly disclaim any interest in obtaining employment. *See id.* at 50 (disagreeing that Plaintiffs must “prove they were actually interested in working for an employer” (cleaned up)). Plaintiffs seek to benefit at workers’ and their employers’ expense. This flatly contradicts the stated

purpose of the EPOA.

History. Nothing in EPOA’s legislative history suggests that it protects those who are ineligible or uninterested in obtaining employment. Nor does the legislative history suggest, as Plaintiffs contend, that the Legislature intended to throw open the floodgates of liability to allow any person who hunts down an allegedly deficient job posting and then submits an application to bring a suit to attempt to claim statutory damages as a type of bounty hunter. Pls.’ Reply Br. at 8 n.4. On the contrary, the legislative history reveals precisely the opposite.

Initially, Senate Bill 5761 was introduced with the term “individual” rather than “job applicant.”³ But

³ See S.B. 5761, 67th Leg., Reg. Sess. (Wash. 2022), <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5761%20SBR%20LCTA%20OC%2022.pdf?q=20241007072734> (last visited Nov. 30, 2024).

legislators “limit[ed]” potential liability for employers by substituting “job applicant” for “individual.”⁴ Plaintiffs’ broad interpretation of “job applicant” effectively asks this Court to interpret the statute as though the legislators had left the “individual” terminology in the bill. That is especially true because today people can apply to jobs simply by clicking a link. Under Plaintiffs’ view of the law, employers can quickly amass virtually unlimited amounts of liability at the click of a button.

Plaintiffs acknowledge that the EPOA’s legislative history shows that the wage transparency provisions were expressly modeled after similar provisions in other States. *See* Pls.’ Opening Br. at 14 (citing Engrossed Substitute H.B. 1696, 66th Leg., Reg. Sess. (Wash. 2019)). For that reason, the Court should look to other States’ laws to illuminate any undefined terms in the

⁴ *Id.*

EPOA. *See Fortgang v. Woodland Park Zoo*, 187 Wn.2d 509, 519–20 (2017) (considering the “similar” laws of other States when interpreting Washington law). In its wage transparency law, California expressly defines “applicant for employment” as “an individual *who is seeking employment with the employer* and is not currently employed with that employer in any capacity or position.” Cal. Lab. Code § 432.3(m)(2) (emphasis added)).

Other States with wage transparency laws do not allow potentially unlimited numbers of plaintiffs to seek statutory penalties against employers at the click of a button. *See, e.g., id.* § 432.3(d)(4) (“For a first violation ... no penalty shall be assessed upon demonstration by the employer that all job postings for open positions have been updated to include the pay scale as required by this section.”); Colo. Rev. Stat. § 8-5-203 (“An employer’s

failure to comply ... for one job opening is considered one violation regardless of the number of postings that list the job opening.”).

Plaintiffs make much of the fact that “the Legislature recently rejected efforts to amend RCW 49.58.110 to limit its protections to ‘bona fide’ job applicants.” Pls.’ Opening Br. at 43. This is a significant overstatement because “the Legislature” never voted on any amendments, which were considered only in committee. In any event, this Court has explained that “when the Legislature rejects a proposed amendment, ... we will not speculate as to the reason for the rejection.” *Spokane Cnty. Health Dist. v. Brockett*, 120 Wn.2d 140, 153 (1992). The Court should decline to speculate in this case too, as the amendment could have been rejected simply because committee members recognized that the statutory language already prohibits the uninterested

and the disqualified from reaping statutory penalties.

B. To have standing, an EPOA plaintiff's interest must accord with the Act's purpose of protecting workers.

Absent “a real interest in the litigation,” a plaintiff in Washington lacks standing to sue. *Maslonka v. Pub. Util. Dist. No. 1 of Pend Oreille Cnty.*, 533 P.3d 400, 406 (Wash. 2023). To have standing to bring a statutory claim, a plaintiff must establish two things: (1) the plaintiff's interest must be “arguably within the zone of interests” protected by the statute; and (2) the plaintiff must have suffered “from an injury in fact.” *Branson v. Port of Seattle*, 152 Wn.2d 862, 876 (2004). Ensuring that any EPOA plaintiff has standing is vital for retailers, who—as employers—are especially vulnerable to Plaintiffs' litigation tactics. As the retail industry is “the largest private-sector employer,” retailers are

constantly advertising to fill large numbers of positions.⁵

1. The EPOA’s zone of interest depends on its “purpose and operation.”

Plaintiffs lack standing to bring a claim under the EPOA unless their interests fall within the zone of interests regulated or protected by the Act. *See Washington State Hous. Fin. Comm’n v. Nat’l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 715 (2019). To determine the scope of a statute’s zone of interest, the Court will look to “the statute’s purpose and operation.” *Id.* at 715.

Purpose. As explained above, the EPOA’s purpose is to protect *workers*—not to protect those who are neither qualified for nor interested in the job. *See*

⁵ National Retail Federation, *The Economic Contribution of the U.S. Retail Industry* at E2 (March 2024), https://5447ef72a1918787c638-f401d17819b7723bf503905fe6b22b93.ssl.cf1.rackcdn.com/pdf/NRF_RetailsImpactReport_March2024.pdf.

RCW 49.58.005 (explaining that the Act’s express purpose is “to promote fairness among workers” by ensuring that employees are “compensated equitably”).

Operation. Effectuating that purpose, the EPOA operates to ensure “equal pay” and to prevent wage discrimination—especially “due to sex or gender.” *Kelley v. Boeing Co.*, 20 Wn. App. 2d 1028, *6–7 (2021) (unpub. op.). Washington courts have refused to entertain EPOA claims from plaintiffs who do not seek to vindicate those specific interests. *See, e.g., id.* (rejecting claim where the plaintiff did not allege “any issues with equal pay or wage discriminat[ion] against anyone due to sex or gender”).

Importantly, there is no need to protect the unqualified or uninterested to ensure the EPOA’s successful operation. Plaintiffs with a genuine interest in seeking employment will not be discouraged from

pursuing their rights under the statute. As discussed above, retaliation by employers against those seeking to vindicate their rights is illegal. The EPOA establishes that “[a]n employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter....” RCW 49.58.050. And even where bona fide job applicants do not wish to bring civil litigation against employers, they can simply file a complaint with L&I. Upon receiving a complaint, L&I “*must* investigate to determine if there has been compliance.” RCW 49.58.060 (emphasis added).

2. To show a concrete injury, a procedural violation is insufficient.

To demonstrate an injury in fact, a plaintiff with a statutory claim must show more than that a defendant merely failed to comply with a statutory obligation,

which produces nothing but a “procedural injury.” *Benton Cnty. Water Conservancy Bd. v. Washington State Dep’t of Ecology*, 546 P.3d 394, 405 (Wash. 2024) (cleaned up). A “concrete interest remains essential to the assertion of such procedural rights.” *Id.*

This “statutory test is drawn from and explained by federal case law.” *Allan v. Univ. of Washington*, 140 Wn.2d 323, 327 (2000) (cleaned up). And federal case law is clear that the Legislature’s “role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). A plaintiff must nonetheless establish a “concrete injury even in the context of a statutory violation.” *Id.*

3. Plaintiffs failed to establish a concrete injury to an EPOA interest.

The Legislature surely did not intend to provide a right to sue in the EPOA that is so broad that it exceeds the bounds of bedrock standing principles. Plaintiffs' position is that any person can qualify as a job applicant. *See Reply Br. at 8 n.4.* The Court should reject Plaintiffs' interpretation of the statute, as it would allow uninjured parties—with interests falling outside the EPOA's zone of protection—to sue.

For example, a child is a person. But a child generally has no legal capacity to work in Washington. RCW 26.28.060 (establishing penalties for employers of children). Plainly, a child does not fall within the zone of interest of a statute designed to protect workers. So a child cannot claim any concrete interest in any employer's disclosures. Similarly, in many instances, a person unqualified for a job has no legal capacity to

accept it. For example, a law firm might advertise a role for an attorney position. But a person without a law license cannot take the job. *See* RCW 2.48.180 (prohibiting nonlawyers from holding themselves out as entitled to practice law and making it a crime to do so). Unqualified and uninterested applicants also fall outside the zone of interests protected by the EPOA. The EPOA was established to benefit workers, RCW 49.58.005, not those uninterested in employment.

Contrary to Plaintiffs' assertions (Pls.' Opening Br. at 50), requiring litigants to establish that they have a genuine interest in employment is not an unworkable requirement. Courts know how to conduct a standing analysis. Federal courts have refused to entertain EPOA plaintiffs' claims for this exact reason. *See, e.g., Wallace v. Marten Transport, LTD.*, No. 2:24-CV-00872-RAJ, 2024 WL 4723751, at *4–5 (W.D. Wash. Nov. 8, 2024)

(questioning “whether Plaintiffs moved to remand ... in good faith” and concluding that plaintiffs lack standing because they failed “to show that they suffered the type of harm against which the statute intends to protect”). And courts have no trouble applying other areas of Washington employment law requiring benefit seekers to have a genuine interest in obtaining employment. *See, e.g.*, RCW 50.20.080 (“An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual.”).

Jettisoning traditional justiciability safeguards in this case will result in severe punishment for allegedly noncompliant employers by exposing them to potentially unlimited numbers of persons applying merely to reap

the minimum statutory “damages.” To prevent unjust punishments of Washington’s employers—big and small—the Court should interpret the EPOA consistent with this Court’s standing doctrine.

C. If any person can be a job applicant, the EPOA yields absurd results.

This Court “avoids a literal reading of a statute if it would result in unlikely, absurd, or strained consequences.” *State v. Elgin*, 118 Wn.2d 551, 555 (1992). Construing a statute meant to protect workers as enshrining a right to exact unlimited sums from employers for the benefit of those uninterested in working is patently absurd. Thus, even if the Court concludes that “job applicant” literally means any person who submits an application to a Washington employer, the Court should nonetheless eschew the literal meaning of the term in favor of a definition that reflects the Legislature’s intent. Doing so would also be

in keeping with this Court’s teaching that “the meaning of words in a statute is not gleaned from the words alone but from all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another.” *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 790 (2019) (cleaned up) (quoting *Burns v. City of Seattle*, 161 Wn.2d 129, 146 (2007)).

The absurd results of adopting Plaintiffs’ definition of “job applicant” are not merely hypothetical. More than 200 cases have been filed under the EPOA’s salary-range-posting provision—most of them by the same law firm, and many of them involving the same serial-litigation plaintiffs. The potential exposure to the retail industry—indeed all industries—is massive.

Many of the cases, roughly 40, have been removed to federal court under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, 1711–15. Removal under CAFA is jurisdictionally barred unless the amount in controversy exceeds \$5 million. *Id.* § 1332(d)(6). That means that for these federal-court cases alone, the Washington employers have a combined potential exposure of roughly \$200 million. Moreover, the results of 17 settlements in state court are publicly known. Those 17 cases together settled for more than \$29 million—with an average of nearly \$2 million per case. If that average is applied to the 140-plus pending state-court cases, Washington employers are facing a potential settlement value close to \$300 million for those outstanding cases. All told, these cases together could cost Washington businesses *half a billion dollars*.

The Legislature surely did not intend to expose

Washington's employers to virtually unlimited penalties. "Not only would such a result be absurd, but also it would make this statute susceptible to an unconstitutional interpretation." *In re Est. of Duxbury*, 175 Wn. App. 151, 170 (2013); see *Gabelein v. Diking Dist. No. 1 of Island Cnty. of State*, 182 Wn. App. 217, 233 (2014) ("Statutes should be construed to avoid results that are absurd and unconstitutional."); *State v. Schomber*, 23 Wn. 573, 576 (1900) (same). For example, exposing employers to potentially unlimited liability would violate the employers' due process rights. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996) ("Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.").

Numerous employers have tried in good faith to comply with the law only to be sued. Information on job postings is often available on multiple sites—the employer’s website as well as third-party sites like Indeed.com. “Scraping” of content by third-party sites does not necessarily pick up all the fields in the employer’s actual posting, and yet these third-party postings have led to EPOA lawsuits, including this very case. *See* Answering Br. of Respondent-Defendant at 11. Information also must be manually entered by recruiters into some job postings—and inadvertent and unintended errors can easily occur as a result.

There is little reason to believe that Washington employers have harbored some desire to thwart the law. To illustrate the point, consider that the EPOA applies to state government employers. RCW 49.58.010(5) (defining state and local governments as employers).

Government employers have no incentives—financial or otherwise—to violate the EPOA’s wage transparency provisions. And yet, *Amici* found nearly a dozen noncompliant state government job postings. These include county prosecutorial positions, city attorney positions, state agency positions, and even positions *within the state judiciary*.

Subjecting employers to potentially boundless liability (depending on the number of applicants) for an innocent or good-faith mistake is absurd and would be unconstitutional. *City of Seattle v. Long*, 198 Wn.2d 136, 166 (2021) (“The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”). Because the Legislature plainly did not intend to subject the State’s employers to

hundreds of millions of dollars of liability for innocent mistakes, the Court should reject Plaintiffs' interpretation of the term "job applicant."

IV. CONCLUSION

The Court should answer the certified question like this: a "job applicant" "entitled" to recover statutory "damages" under the EPOA must be a person who actually applied for the job with a good faith or bona fide interest in obtaining the posted job.

Certificate of Compliance: I certify this brief contains 4,477 words in compliance with Rules of Appellate Procedure 10.4 and 18.17(b).

RESPECTFULLY SUBMITTED this 20th day of December, 2024.

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I certify, under penalty of perjury under the laws of the state of Washington, that on the 20th day of December, 2024, I electronically filed the foregoing document via the Washington State Appellate Courts' Secure Portal which will send a copy of the document to all parties of record via electronic mail.

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